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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. 362

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ET AL., PETITIONERS,

vs.

WEBB'S CITY, INC.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

PETITION FOR CERTIORARI FILED AUGUST 12, 1963

CERTIORARI GRANTED DECEMBER 9, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

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vs.

WEBB'S CITY, INC.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

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[fol. 1] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PINELLAS COUNTY. IN CHANCERY.

No. 57341

WEBB'S CITY, INC., a Florida corporation, Plaintiff,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a non-profit New York corporation authorized to do business in the State of Florida; RALPH M. WIMBISH and BETTE C. WIMBISH, his wife; et al., Defendants.

COMPLAINT—Filed December 7, 1960

Comes now the plaintiff, Webb City, Inc., a Florida corporation, by its undersigned attorneys, and sues the defendants, National Association for the Advancement of Colored People, a non-profit New York corporation authorized to do business in the State of Florida, Ralph M. Wimbish and Bette C. Wimbish, his wife, and all members of the corporate defendant, and all other persons acting in conjunction with said defendants in connection with the acts hereinafter set forth, and says:

1. That the plaintiff is a Florida corporation engaged in the sale of general merchandise, having its principal place of business at 128—9th Street South, in the City of St. Petersburg, Pinellas County, Florida, and has been doing business at said location for a period of over thirty-six years.

2. That beginning on Friday, December 2, 1960, the corporate defendant, acting by and through its duly chartered St. Petersburg Chapter and the membership thereof and the individually named defendants and classes of unnamed defendants, have entered upon a course of conduct

[fol. 2] as hereinafter set forth with malicious intent to interfere with and damage the business of the plaintiff.

3. That the acts hereinafter set forth constitute malicious and unlawful interference with the business of the plaintiff and likewise constitute both a public and private nuisance.

4. That beginning on the aforesaid date the defendants have committed the following actions with intent to damage the plaintiff:

(a) The defendants have engaged in picketing the aforesaid premises of the plaintiff and have been displaying signs and passing out handbills requesting passersby not to do business with the plaintiff.

(b) The defendants have directed said pickets to stand in such a manner that they block the entrances to the plaintiff's place of business and likewise the public sidewalks surrounding said premises, thereby making it inconvenient for customers of the plaintiff attempting to enter the plaintiff's place of business, and the defendants have through their actions intimidated customers of the plaintiff, of both races, attempting to enter plaintiff's aforesaid premises, and thereby prevented many customers from entering the plaintiff's premises and making purchases.

(c) The defendants and their agents who have been conducting the aforesaid picketing have been guilty of violence towards customers of the plaintiff attempting to cross the aforesaid picket lines and enter the premises of the plaintiff, in that said pickets have on occasion shoved and jostled customers in an obvious attempt to discourage anyone from entering upon the aforesaid business premises of the plaintiff.

(d) The defendants and their agents have caused numerous telephone calls to be made to the plaintiff's place [fol. 3] of business threatening to plant explosives within the premises of the plaintiff unless the plaintiff acceded to certain demands of the defendants. That the aforesaid callers have used extremely vulgar language to the switchboard operators employed by the plaintiff, thereby em-

barrassing and humiliating said operators, and said calls have likewise overloaded said switchboard and prevented a great number of normal business phone calls.

(e) That the plaintiff employs approximately 150 Negro employees, and the defendants have threatened said employees with bodily harm if they continue to work for the plaintiff, and have likewise taken action to deprive said employees of transportation between their homes and the premises of the plaintiff.

5. That attached hereto by reference made a part hereof and marked Exhibits 1 through 17, are certain photographs which demonstrate the activities referred to in paragraphs 4(a) and 4(b) above.

6. That as a direct and proximate result of these actions on the part of the defendants, the plaintiff's business has been damaged in that its receipts from gross sales on each business day since the aforesaid activities have commenced have been approximately $15,000.00 below the reasonably expected revenue for each of said dates.

7. That unless an injunction is issued by this Court promptly and without notice to the defendants, the plaintiff will suffer irreparable damage in that it is suffering severe losses hereinabove alleged each day that the aforesaid actions are allowed to continue, for which the defendants are unable to respond in damages, and the plaintiff's remedy at law is totally inadequate.

[fol. 4] Wherefore, the plaintiff prays:

1. That this Court will issue an injunction without notice temporarily restraining the defendants and all persons acting in conjunction with said defendants from doing any of the actions set forth in paragraph 4 hereof.

2. That upon final hearing herein that said injunction will be made permanent.

3. That the Court grant such other and further relief as may to the Court seem meet and proper.

Sam Bucklew, of Bucklew, Ramsey & Phillips, 403 Morgan Building, Tampa 2, Florida, Attorneys for Plaintiff.

Duly sworn to by J. E. Webb, jurat omitted in printing.

[fol. 5] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

TEMPORARY RESTRAINING ORDER—December 6, 1960

This cause coming on this day to be heard upon the sworn complaint of the plaintiff, and the Court being fully advised in the premises, it is

Ordered, Adjudged and Decreed that the defendants, National Association for the Advancement of Colored People, Ralph M. Wimbish, and Bette C. Wimbish, all members of the St. Petersburg Chapter of the aforesaid corporate defendant, and all other persons acting in conjunction with said named defendants, be, and they are hereby, temporarily enjoined from committing any of the following acts:

1. Displaying signs, posters or handbills requesting that members of the public not trade with the plaintiff, either on the premises of the plaintiff or on the sidewalk immediately adjacent thereto.

2. Picketing the premises of the plaintiff located at 128 Ninth Street South, St. Petersburg, Florida, or interfering in any manner whatsoever with the free ingress and egress of the customers of the plaintiff at said place of business.

[fol. 6] 3. Placing any telephone calls to the place of business of the plaintiff, except for the purpose of transacting legitimate business with the plaintiff.

4. Threatening any employee of the plaintiff, or threatening any person providing transportation to any such employee from his residence to the place of business of the plaintiff.

It is further Ordered, Adjudged and Decreed that this order become effective upon the plaintiff posting bond in the amount of $2,000.00, in favor of the defendants, and conditioned to pay all damages and costs which may accrue by reason of the issuance of this temporary restraining order.

Done and Ordered in Clearwater, Florida, this 6th day of December, 1960.

Jack F. White, Circuit Judge.

[fol. 7]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

SUMMONS IN CHANCERY—December 7, 1960

Original

The State of Florida

To the above named Defendant: National Association for the Advancement of Colored People, a non-profit New York corporation authorized to do business in the State of Florida,

You are hereby summoned and require to serve a copy of your Answer to the Complaint, which is herewith served upon you, within 20 days after service of the summons upon you, exclusive of the day of service, upon Bucklew, Ramsey & Phillips, plaintiff's attorneys, whose address is 403 Morgan Building, Tampa 2, Florida, and the original of said Answer shall be filed with the Clerk of said Court. If you fail to do so, decree pro confesso will be entered against you for the relief demanded in the bill of complaint.

Date December 7, 1960

Avery W. Gilkerson, As Clerk of said Circuit Court.
By: Alford L. Gordan, As Deputy Clerk.

(Seal)

Bucklew, Ramsey & Phillips, Attys.

[fol. 9]

No. 57,341

ORIGINAL RETURN

Received This Writ on the 7 Day of Dec. 1960 and executed the same in Hillsborough County, Florida, on the 7 day of Dec., 1960, at 3:55 P.M., upon National Association for the Advancement of Colored People, a non-profit N.Y. corp. authorized to do business in State of Fla. the within named defendant, by delivering a true copy thereof to Robert W. Saunders, as Resident Agent of the within named defendant, at the designated office and place of business of said defendant, and by then and there showing to such Resident Agent this original and explaining to him the contents thereof, and at the same time delivering to such Resident Agent a copy of the Plaintiff's initial pleading as furnished by the Plaintiff in this cause. This original summons and all copies served were endorsed with the date and hour of service.

Service	$2.60
Mileage	.60
	$3.20

Ed Blackburn, Jr., Sheriff, Hillsborough County, Florida, By Aristo Perez, D.S.

[fol. 10]

[File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

No. 57,341 C

[Title omitted]

TEMPORARY RESTRAINING ORDER—December 6, 1960

This cause coming on this day to be heard upon the sworn complaint of the plaintiff, and the Court being fully advised in the premises, it is

Ordered, Adjudged and Decreed that the defendants, National Association for the Advancement of Colored People, Ralph M. Wimbish, and Bette C. Wimbish, all members of the St. Petersburg Chapter of the aforesaid corporate defendant, and all other persons acting in conjunction with said named defendants, be, and they are hereby, temporarily enjoined from committing any of the following acts:

1. Displaying signs, posters or handbills requesting that members of the public not trade with the plaintiff, either on the premises of the plaintiff or on the sidewalk immediately adjacent thereto.

2. Picketing the premises of the plaintiff located at 128 Ninth Street South, St. Petersburg, Florida, or interfering in any manner whatsoever with the free ingress and egress of the customers of the plaintiff at said place of business.

[fol. 11] 3. Placing any telephone calls to the place of business of the plaintiff, except for the purpose of transacting legitimate business with the plaintiff.

4. Threatening any employee of the plaintiff, or threatening any person providing transportation to any such employee from his residence to the place of business of the plaintiff.

It is further Ordered, Adjudged and Decreed that this order become effective upon the plaintiff posting bond in

the amount of $2000.00, in favor of the defendants, and conditioned to pay all damages and costs which may accrue by reason of the issuance of this temporary restraining order.

Done and Ordered in Clearwater, Florida, this 6th day of December, 1960.

Jack F. White, Circuit Judge

[fol. 12]

No. 57,3341 C

ORIGINAL RETURN

Received This Writ on the 7 day of Dec., 1960 and executed the same in Hillsborough County, Florida, on the 7 day of Dec., 1960, at 8:55 P.M., upon National Association for the Advancement of Colored People, a non-profit N. Y. corp. authorized to do business in state of Fla., the within named defendant, by delivering a true copy thereof to Robert W. Saunders as Resident Agent of the within named defendant, at the designated office and place of business of said defendant, and by then and there showing to such Resident Agent this original and explaining to him the contents thereof, and at the same time delivering to such Resident Agent a copy of the Plaintiff's initial pleading as furnished by the Plaintiff in this cause. This original summons and all copies served were endorsed with the date and hour of service.

Service $2.60.

Ed Blackburn, Jr., Sheriff, Hillsborough County, Florida, By Aristo Perez, D.S.

[fol. 14] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

SUMMONS IN CHANCERY—December 7, 1960

Original

THE STATE OF FLORIDA

To the above named Defendants: Ralph M. Wimbish and Bette C. Wimbish, his wife,

You are hereby summoned and required to serve a copy of your Answer to the Complaint, which is herewith served upon you, within 20 days after service of the summons upon you, exclusive of the day of service, upon Bucklew, Remsay & Phillips plaintiff's attorneys, whose address is 403 Morgan Building, Tampa 2, Florida and the original of said Answer shall be filed with the Clerk of said Court. If you fail to do so, decree pro confesso will be entered against you for the relief demanded in the bill of complaint.

Date, December 7, 1960.

Avery W. Gilkerson, As Clerk of said Circuit Court,
By: Alford L. Gordon, As Deputy Clerk.

(SEAL)

[fol. 15]

SHERIFF'S RETURN

Received this writ on the 7th day of December A.D. 1960 and served the same on Ralph M. Wimbish the within named defendant at 12:25 P. M. on the 7th day of December A. D., 1960 in Pinellas County, Florida, by delivering to the within named defendant a true copy of this writ with the date and hour of service endorsed thereon by me, and at the same time I delivered to the within named defendant a copy of plaintiff's initial pleading (petition) as furnished by the plaintiff.

Received this writ on the 7th day of December A.D. 1960 and served the same on Bette C. Wimbish the within named defendant at 4:45 P. M. on the 7th day of December A. D., 1960 in Pinellas County, Florida, by delivering to the within named defendant a true copy of this writ with the date and hour of service endorsed thereon by me, and at the same time I delivered to the within named defendant a copy of plaintiff's initial pleading (petition) as furnished by the plaintiff.

Don Genung, Sheriff, Pinellas County, Florida; By: Hughie E. Lisenby, Deputy Sheriff.

[fol. 16]

[File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

57,341

[Title omitted]

TEMPORARY RESTRAINING ORDER—December 6, 1960

This cause coming on this day to be heard upon the sworn complaint of the plaintiff, and the court being fully advised in the premises, it is

Ordered, Adjudged and Decreed that the defendants, National Association for the Advancement of Colored People, Ralph M. Wimbish, and Bette C. Wimbish, all members of the St. Petersburg Chapter of the aforesaid corporate defendant, and all other persons acting in conjunction with said named defendants, be, and they are hereby, temporarily enjoined from committing any of the following acts:

1. Displaying signs, posters or handbills requesting that members of the public not trade with the plaintiff, either on the premises of the plaintiff or on the sidewalk immediately adjacent thereto.

2. Picketing the premises of the plaintiff located at 128 Ninth Street South, St. Petersburg, Florida, or interfering

in any manner whatsoever with the free ingress and egress of the customers of the plaintiff at said place of business.

[fol. 17] 3. Placing any telephone calls to the place of business of the plaintiff, except for the purpose of transacting legitimate business with the plaintiff.

4. Threatening any employee of the plaintiff, or threatening any person providing transportation to any such employee from his residence to the place of business of the plaintiff.

It is further Ordered, Adjudged and Decreed that this order become effective upon the plaintiff posting bond in the amount of $2000.00, in favor of the defendants, and conditioned to pay all damages and costs which may accrue by reason of the issuance of this temporary restraining order.

Done and Ordered in Clearwater, Florida, this 6th day of December, 1960.

Jack F. White, Circuit Judge.

[fol. 19]

SHERIFF'S RETURN

Came to hand the 7th day of December A.D., 1960 and executed the same in Pinellas County, Florida, on the 7th day of December A.D., 1960 by delivering a true copy of the original and explaining the contents thereof to Ralph M. Wimbish, Bette C. Wimbish within named defendants. And executed the same in Pinellas County, Florida on the 7th day of December A. D. 1960, by delivering a true copy of the original and explaining the contents thereof to William McNorton, Herbert McLeod, Lewis Lamphey and Eleanor Adams, all members of the within named Association.

Don Genung, Sheriff, Pinellas County, Florida; By Hughie E. Lisenby, Deputy Sheriff.

[fol. 20] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER—Filed December 23, 1960

Come now the Defendants, Ralph M. Wimbish and Bette C. Wimbish, his wife by and through their undersigned Attorneys, and respectfully move the Court to dissolve the Temporary Restraining Order heretofore entered for the following reasons, to wit:

1. That the allegations of the Bill of Complaint do not entitle the Plaintiff to injunctive relief.

2. That there is no equity in the Bill of Complaint filed herein.

3. That the Bill of Complaint does not allege any facts showing, or tending to show, that a failure to grant the temporary injunction would work irreparable injury to the Plaintiff.

4. That the Bill of Complaint does not allege any facts the proof of which would entitle the Plaintiff to a temporary or permanent restraining order.

5. That the matters and facts set forth and alleged in the answer of the Defendants defeat the equities of the Complaint.

6. That the Temporary Restraining Order is a violation of the Florida Constitution, Declaration of Rights, Sections 13 and 15 and of the 1st and 14th amendments to the United States Constitution.

[fol. 21] By Isaiah W. Williams, of Minnis and Williams, 624—22nd Street South, St. Petersburg 12, Florida

and

Frank H. White, 911—22nd Street South, St. Petersburg 12, Florida,
Attorneys for Defendants.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 22] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

NOTICE OF HEARING—Filed December 23, 1960

To: Bucklew, Ramsey and Phillips, 403 Morgan Building, Tampa 2, Florida, Attorneys for Plaintiff.

Please Take Notice that the undersigned will call up for hearing the Defendants Motion To Dissolve Temporary Restraining Order and also call up for Final Hearing the above captioned matter before the Honorable Jack F. White, one of the Judges of the above entitled Court, In Chambers, in Clearwater, Florida, on Wednesday, March 8th, 1961 at the hour of 10:00 A.M.

Please govern yourselves accordingly.

By Isaiah W. Williams, of Minnis and Williams, Attorneys for Defendants.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 23] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

ANSWER AND DEFENSES—Filed December 23, 1960

First Defense

Come now the Defendants, Ralph M. Wimbish and Bette C. Wimbish, his wife by and through their undersigned Attorneys, and move to dismiss the Complaint, on the following grounds:

1. The Complaint fails to state a cause of action upon which relief can be granted.

2. The Complaint fails to show that the Court has jurisdiction over the parties hereto:

3. The Complaint fails to show that the Court has jurisdiction over the subject matter in this cause.

Second Defense

The Defendants move to strike paragraph four (4) of the Complaint on the ground that same is redundant, impertinent and scandalous.

Third Defense

That the issuance of a permanent injunction will be in contravention of Sections 13 and 15, Declaration of Rights, of the Florida Constitution and of the 1st and 14th amendments to the United States Constitution.

[fol. 24] Fourth Defense

That the Defendant, Bette C. Wimbish, individually, is not a proper Party Defendant to this cause of action.

Fifth Defense

Come now the Defendants, Ralph M. Wimbish and Bette C. Wimbish, his wife by and through their undersigned Attorneys, and for their answer to the Complaint filed herein say and allege as follows:

1. That the Defendants admit the allegations contained in paragraph one (1) of the Complaint.

2. That the Defendants deny the allegations contained in paragraph two (2) of the Complaint.

3. That the Defendants deny the allegations contained in paragraph three (3) of the Complaint.

4. That the Defendant admit the allegation contained in sub-paragraph (a) of paragraph four (4) with respect to picketing and the Defendants would affirmatively state that said picketing was peaceful. The Defendants deny the other allegation contained in sub-paragraph (a) of paragraph four (4) of the Complaint.

The Defendants deny each and every allegation contained in sub-paragraphs (b) to (e) inclusive of paragraph four (4) of the Complaint.

5. That the Defendants are without knowledge with respect to the photographs designated in paragraph five (5) of the Complaint same not being served on the Defendants.

6. That the Defendants are without knowledge of the allegations contained in paragraph six (6) of the Complaint and demand strict proof thereof.

7. That the Defendants are without knowledge as to the allegations contained in paragraph seven (7) of the Complaint. The Defendants, however, would affirmative [fol. 25] state that the Plaintiff's remedy at law is adequate.

Isaiah W. Williams, of Minnis and Williams, 624—22nd Street South, St. Petersburg 12, Florida
And
Frank H. White, 911—22nd Street South, St. Petersburg 12, Florida,
Attorneys for Defendants.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 26] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

MOTION TO DISMISS—Filed December 27, 1960

Comes now the defendant National Association For The Advancement of Colored People, a non-profit New York corporation authorized to do business in the State of Florida and moves this Honorable Court to dismiss the Complaint hereinbefore filed on the following grounds:

1. Lack of jurisdiction over subject matter of the suit.

2. Insufficiency of service of process upon corporate defendant, National Association For The Advancement of

Colored People, a non-profit corporation authorized to do business in the State of Florida.

3. Failure to state a cause of action upon which relief can be granted.

Robert Carter, 20 West 40th Street, New York 18, New York;
Francisco A. Rodriguez, 703 Harrison Street, Tampa 2, Florida,
Attorneys for Defendant NAACP, etc., By: Francisco A. Rodriguez.

[fol. 27] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

PRAECIPE FOR DECREE PRO CONFESSO—
Filed December 28, 1960

The Clerk of the above styled Court will please enter a Decree Pro Confesso against the defendant, National Association for the Advancement of Colored People, a non-profit New York corporation authorized to do business in the State of Florida, for its failure to answer or otherwise plead to the Complaint heretofore served on the 7th day of December, 1960.

Dated this 27th day of December, 1960.

George W. Phillips, of Bucklew, Ramsey & Phillips, 403 Morgan Building, Tampa 2, Florida, Attorneys for Plaintiff.

[fol. 28] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

CERTIFICATE OF CLERK—DECREE PRO CONFESSO
—Filed December 28, 1960

And now on this 28th day of December, A.D. 1960, comes the Plaintiff in the above-entitled cause, by its soliciters, Bucklew, Ramsey, and Phillips, and finding no answer or other defense filed by the defendant National Association for the Advancement of Colored People, moves the Court for a decree pro confesso against the said defendant.

Whereupon, it is ordered that the said plaintiff do have and take its said decree pro confesso against the said defendant, and that leave to take testimony be granted to said Plaintiff.

Avery W. Gilkerson, Clerk of the Circuit Court, By Alford L. Gordan, D. C.

Clearwater, Florida, this 28th day of December, 1960.

(Clerk's certificate to foregoing paper omitted in printing.)

[fol. 29]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

(Letterhead of Bucklew, Ramsey & Phillips, Attorneys at Law, Tampa 1, Florida)

December 29, 1960

Honorable Judge Jack White
Judge of the Circuit Court
Pinellas County Court House
Clearwater, Florida

Re: *Webb City vs. NAACP*

Dear Judge:

Mr. Swanson in the Law Department of the Clerk's Office advised that a Decree Pro Confesso was inadvertently entered against the NAACP.

We have a copy of the Motion filed by NAACP within the proper time and I am entirely agreeable that the Decree Pro Confesso should be stricken, and I advised Mr. Swanson that I would write you to that effect.

With kindest regards and best wishes for a most Happy New Year.

Sincerely yours,

SAM BUCKLEW

SB:wr
cc: Law Department
Clerk's Office
Attn: Mr. Swanson

[fol. 30] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

NOTICE OF HEARING—Filed January 16, 1961

To: Mr. Robert Carter
20 West 40th Street
New York 18, N. Y.

Mr. Francisco A. Rodriguez
703 Harrison Street
Tampa 2, Florida

You Will Please Take Notice that the plaintiff, by its undersigned attorneys, will call up for hearing Defendant's Motion to Dismiss before the Honorable Jack F. White at the Court House in Clearwater, Florida, at 10:00 o'clock A. M., on Wednesday, March 8, 1961.

Please govern yourselves accordingly.

George W. Phillips, of Bucklew, Ramsey & Phillips, 403 Morgan Building, Tampa 2, Florida, Attorneys for Plaintiff.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 31] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

NOTICE OF APPLICATION FOR PERMANENT INJUNCTION —Filed January 16, 1961

To: Messrs. Minnis and Williams,
624—22nd Street South
St. Petersburg 12, Florida

Mr. Robert Carter,
20 West 40th Street
New York 18, New York.

Mr. Francisco A. Rodriguez,
703 Harrison Street
Tampa 2, Florida.

Notice is hereby given that the undersigned, as attorneys for the plaintiff, will present testimony and will apply to the Court for a permanent injunction herein at the hearing before the Honorable Jack F. White at the Court House in Clearwater, Florida, at 10:00 o'clock A. M., on Wednesday, March 8, 1961.

Please govern yourselves accordingly.

George W. Phillips, of Bucklew, Ramsey & Phillips, 403 Morgan Building, Tampa 2, Florida, Attorneys for Plaintiff.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 32] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

NOTICE OF TAKING DEPOSITION—Filed February 27, 1961

To: Minnis and Williams
624—22nd Street, South
St. Petersburg, Florida
Attorneys for Ralph M. Wimbish and
Bette C. Wimbish, his wife, defendants

Mr. Robert Carter
20 West 40th Street
New York 18, New York

and

Mr. Francisco A. Rodriguez
703 Harrison Street
Tampa 2, Florida
Attorneys for National Association for the
Advancement of Colored People, Defendants

You Will Please Take Notice that the undersigned, as attorneys for the plaintiff, will take the deposition on oral examination for the purpose of discovery and for use in the trial of this cause, of Ralph M. Wimbish and Bette C. Wimbish, his wife, in the office of the Official Court Reporter of the Circuit Court in the County Building in St. Petersburg, Florida, on Friday, March 3, 1961, at 10:00 A.M.

The attorneys for the defendants, Ralph M. Wimbish and Bette C. Wimbish, his wife, are hereby requested to produce [fol. 33] the witnesses at said time and place for examination, and you may be present to cross examine.

Sam Bucklew, of Bucklew, Ramsey & Phillips, 403 Morgan Building, Tampa, Florida, Attorneys for Plaintiff.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 34] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

NOTICE OF TAKING DEPOSITION—Filed February 27, 1961

To: Bucklew, Ramsey & Phillips
403 Morgan Building
Tampa, Florida
Attorneys for Plaintiff

Please Take Notice that the Defendants, Ralph M. Wimbish and Bette C. Wimbish, by their undersigned attorneys, will take the oral deposition of J. E. Webb, President of the Corporate Plaintiff, at 10:00 A.M. on Friday, March 3, 1961, before Mrs. Maude Clingan, official court reporter, in Room 310 County Building, St. Petersburg, Florida, under the Florida rules of Civil Procedure, at which time you will please produce said J. E. Webb, for examination, and be present, if you so desire.

Isaiah W. Williams, of Minnis and Williams, Attorneys for Defendants.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 35] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

PRAECIPE FOR WITNESS SUBPOENAS—Filed March 6, 1961

To: Honorable Avery W. Gilkerson,
Clerk of Above Entitled Court:

The Clerk of the above styled Court will please issue witness subpoenas in the above styled case, requiring the appearance of the hereinafter named persons before the Honorable Jack F. White, Circuit Judge on Wednesday,

March 8th, 1961, at 10:00 A.M. in Clearwater, Florida, to testify in the above styled case in behalf of the above named defendants.

Theodore Lockhart	c/o Gibbs Junior College
Leon Cox	1611 Russell Street South
Henry Lyons	c/o Gibbs Junior College
Mary Walker	c/o Gibbs Junior College
Louis Harper	c/o Gibbs Junior College
Mrs. Minnie Hughes	533—21st Street South
Willie Tarver	373 Jackson Street North
Samuel Adams	c/o St. Petersburg Times
Reverend J. L. Fennell	2027—7th Avenue South
Lt. Jack Healy	c/o St. Petersburg Police Department
Sgt. Russell Barnes	c/o St. Petersburg Police Department
Officer George Vinson	c/o St. Petersburg Police Department
James Wilson	c/o Blue Star Cab Company 13th Avenue & 22nd Street So.

[fol. 36] Isaiah W. Williams, of Minnis and Williams, 624—22nd. Street South, St. Petersburg, Florida

and

Frank H. White, 911—22nd. Street South, St. Petersburg, Florida,

Attorneys for Defendants.

[fol. 37] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

MOTION TO STRIKE PLEADINGS AND TO DISMISS COMPLAINT —Filed March 6, 1961

Come now the Defendants, Ralph M. Wimbish and Bette C. Wimbish, his wife and respectfully move the court to strike the pleadings and to dismiss the action against the defendants Pursuant to Florida Rules of Civil Procedure, 1.31(d) and in support thereof state the following:

1. That on February 24, 1961, the Defendants filed their notice of taking a Deposition of J. E. Webb, President of Defendant Corporation on March 3rd, 1961 at 10:00 A.M.

2. That the said J. E. Webb failed and refused to appear for the examination as provided for by Rule 1.24 of the Florida Rules of Civil Procedure, although the Defendants selected the time and place designated by the Plaintiffs for the taking of the Defendant's Deposition.

3. That the said party, President of Defendant Corporation did not file a motion to enlarge or shorten the time as provided for in Florida Rule of Civil Procedure, 1.24(a).

4. That the failure and refusal of the said party to appear as requested has prevented the Defendants from adequately preparing their defenses to the action filed herein.

[fol. 38] 5. That the Plaintiff as the moving party in this cause of action was under a legal duty to appear as requested or file a timely motion in opposition thereto.

Isaiah W. Williams, of Minnis and Williams, Attorneys

and

Frank H. White, 911—22nd. Street South, St. Petersburg, Florida.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 39] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

DEPOSITIONS OF RALPH M. WIMBISH AND C. BETTE WIMBISH—March 3, 1961

The depositions of Ralph M. Wimbish and C. Bette Wimbish, taken before Arthur S. Clum, Notary Public, State of Florida at Large, at the County Building, St. Petersburg, Pinellas County, Florida, on the 3rd day of March, A.D., 1961, for purposes of discovery, there being present at said time and place:

APPEARANCES:

Mr. Sam Bucklew, of Bucklew, Ramsey & Phillips, Attorney for plaintiff.

Mr. Fred G. Minnis and Mr. Isaiah W. Williams, of Minnis & Williams; and Mr. Frank H. White, Attorneys for defendants.

[fol. 40] COLLOQUY

Mr. Williams: We have conferred on this matter and it is our opinion that we have, pursuant to notice, we have our witnesses here for their deposition and pursuant to notice reasonably given, we ask for the production of the president of the defendant corporation, and he is not here, and so—

Mr. Bucklew: We can produce the vice-president of the corporation, if that is what you want to do.

Mr. Williams: But the vice-president of the corporation did not sign this complaint.

Mr. Bucklew: That is right; he is an officer of the corporation and can represent the corporation.

Mr. Williams: And J. E., the one that should be here pursuant to the complaint that was filed herein, and we had no objection to proceed under the Florida Civil Rules of Procedure.

Mr. Bucklew: What is that?

Mr. Williams: With respect to failure of the witness to show up pursuant to notice. We have no objection for you to go ahead and take depositions of our witnesses, of our clients.

Mr. Bucklew: When did you give me that notice?

Mr. Williams: It was mailed out Friday.

Mr. Bucklew: What?

Mr. Williams: It was mailed out Friday.

Mr. Bucklew: Here we are. Let me look at the book. [fol. 41] Mr. Minnis: The only other statement I would like to make in connection with it is that the Court's not governed by anybody's personal business, and if the Court's calendar were to be controlled by the caprice of individuals, why we would never get through. And after all, Mr. Webb is the moving party in this case, and as the moving party has a special responsibility.

Mr. Williams: May I also conclude with this remark, that our client, Dr. Wimbish, is a very busy physician and he has important cases this morning which he has to lay aside in order to be here for this deposition. And I think a person's welfare, a person's life is much more important than some business connection down in Miami.

Mr. Bucklew: The plaintiff, Webb's City, Inc., was served with—or, Counsel for plaintiff, Webb's City, Inc., was served with notice to produce for examination on oral deposition, J. E. Webb, president of the corporate plaintiff, at ten A.M. on Friday, March 3rd, in Room 310, County Building, St. Petersburg, Florida. Counsel for the plaintiff states for the record that this notice was served for the taking of the deposition of the president of Webb's City, Inc., after defendants had been served with notice of taking the testimony of Dr. Wimbish and his wife, Bette C. Wimbish, at the same time and place, and at the same hour. The plaintiff offers to submit himself for oral examina- [fol. 42] tion, or interrogation upon the defendants at this time at any subsequent date after the completion of the taking of the depositions on discovery of the two defendants, Dr. Wimbish and his wife, Bette C. Wimbish; said depositions—said offer to submit for examination to be either on Monday or Tuesday following the taking of

the depositions for which defendants already had notice at the time they served notice on the plaintiff.

Okay. Now, is Dr. Wimbish here?

Mr. Williams: He will be here. We are going to call him. We can proceed with Mrs. Wimbish.

Mr. Bucklew: I want to take his testimony first.

Mr. Williams: You want to take his first?

Mr. Bucklew: That is right. Let the record further show that the plaintiff, Webb's City, Inc., offers to produce for oral examination at any time beginning at nine o'clock Monday morning, Doc J. E. Webb, president of the plaintiff corporation; let the record further disclose that the defendant, Dr. Ralph Wimbish failed to be present or appear at the time designated and requested in the notice served upon the Attorneys for the defendant, and that as of 10:25, Dr. Wimbish had failed to appear in the Court for the taking of his said deposition.

Mr. Williams: May I add something in the record too? Let the record reflect that the defendant has produced at [fol. 43] the time testified taking the deposition of Mrs. Bette C. Wimbish and that she is duly here and her deposition may be taken at the instance of the plaintiff; that Dr. Wimbish, the defendant herein, is on his way to the hearing at the present time, the hour being 10:24; let the record further reflect that the defendant, Dr. Ralph Wimbish, a practicing physician in the city of St. Petersburg, had a tremendous case load for Friday morning, March 3rd, 1961, and because of this, he was delayed in getting to the hearing; let the record further reflect that Counsel for the defendants, Ralph Wimbish and Bette C. Wimbish indicated to the plaintiff Attorney that upon the taking of the deposition of Bette C. Wimbish, that Doc Wimbish would be notified and would be en route for his deposition.

[fol. 44] DEPOSITION OF RALPH WIMBISH

RALPH WIMBISH, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bucklew:

Q. State your name.
A. Ralph Wimbish.
Q. Where do you live?
A. At 3217—15th Avenue South, St. Petersburg, Florida.
Q. How long have you lived there?
A. I have lived there for about nine years.
Q. Have you always been a resident of Florida?
A. I have always been a resident of Florida.
Q. Born and raised in Florida?
A. I wasn't born in Florida. I came here when I was a year old. I was born in Georgia.
Q. And what is your business or profession?
A. I am in the practice of medicine.
Q. How long have you been a practicing physician?
A. For ten years.
Q. For ten years?
A. Yes sir.
Q. In Pinellas County?
A. In Pinellas County.
Q. Is your practice a general practice, or do you specialize in any particular field?
[fol. 45] A. I do general practice.
Q. Are you married?
A. I am married.
Q. And your wife's name is Bette Wimbish?
A. It is C. Bette Wimbish.
Q. C. Bette Wimbish?
Prior to your becoming a physician, did you follow any other trade, business or profession?
A. Only a student and a soldier.
Q. And you were in the Army and you were a medical student and other than that, you have never followed any other business or profession?

A. I have not.

Q. Are you familiar with an organization known as the National Association for the Advancement of Colored People?

A. I am.

Q. Is that a national or New York corporation?

A. It is.

Q. And do they have chapters which are chartered under the general New York charter in various cities in Florida?

A. I can't answer that. That is a technical question that I am not qualified to answer.

Q. All right. Do you know whether or not they have a chapter which is a branch or subsidiary of the National Association for the Advancement of Colored People in St. Petersburg?

[fol. 46] A. I am aware of that.

Q. You are aware of that?

A. Yes.

Q. Do you know whether or not this chapter is chartered or granted by the National Association?

A. It is.

Q. And do you know whom the president of the St. Petersburg chapter of the National Association for the Advancement of Colored People is?

A. I do.

Q. And who is that?

A. I am.

Q. You are the president?

A. That is correct.

Q. And who are the other officers of the local chapter?

A. Well, a Reverend Higgs is the vice-president, but he has left the city to—he is a minister. He's been transferred to West Palm Beach and that office is being held pro tem by Leon Cox. Our treasurer is Dr. O. T. Ayer. The secretary is Mrs. Ethel Mainor.

Q. Now, they are all colored people?

A. They are.

Q. And how long have you been president, doctor?

A. About fifteen months now, I presume.

Q. You were the president of the local chapter in Decem-

[fol. 47] ber of 1960, were you not?

A. I was.

Q. And all of these other officers that you have named, with the exception of the Reverend Cox, were the same?

A. That is correct.

Q. In the operation or the conduct of the affairs of the local chapter of which you are president, do you receive your instructions and orders from the national chapter?

A. I do not.

Q. Does the local chapter receive instructions or orders from the national chapter?

A. It does not. It—well, that is it.

Q. Then as I understand it, the national chapter, the National Association has no—has nothing to do with the policy or the procedure or the handling of the business affairs of the local chapter?

A. There are in the organization certain procedures and orders of business, certain rules of conduct by which we abide, but in reference to any specific activities as far as the local program is concerned, we do not receive instructions as to how we are to conduct our business here. We follow the national system as far as what our over-all objectives are, but the methods that we use in this instance, or in most instances that I have exercised, have been those which are organized within the organization itself.

[fol. 48] Q. Within your local organization?

A. That is right.

Q. Pursuant to the—

A. Objectives.

Q. —policies set up or suggested or directed by your officers and directors?

A. Yes.

Q. And approved by the membership, is that correct?

A. That is correct.

Q. Do you have a board of directors—

A. We have a board of directors.

Q. And how many on your board of directors?

A. There are eight members of the board of directors.

Q. And the actions then, or the policy and the actions of your local chapter, are adopted or directed by your board of directors and carried out by your officers, is that correct?

A. That is correct.

Q. Are you acquainted with or familiar with a certain picketing activity which occurred, or which was in the process? It began on December 2nd, on a Friday, 1960, in St. Petersburg, at which time the store, premises known as Webb's City, was being picketed?

A. I am.

Q. And who was doing that picketing?

A. Well, that was being done by persons who were inter-
[fol. 49] ested in the same things that we were interested in.

Q. Same objectives?

A. Same objectives that we were interested in. The group was comprised largely of members of a student body at the various schools and by members of the National Association, St. Petersburg branch, by myself, and citizens who are—of St. Petersburg who were interested.

Q. Your wife, did she take part in that, too?

A. She did not.

Q. Did she ever visit Webb's Drugstore at or during—at the time of, or during, the picketing of Webb's City?

A. She did not, and I might state that she was pregnant and was confined to her home largely and did not at any time enter on the premises of Webb's.

Q. Now, the individuals who, if I understand it correctly, who took part in and participated in this picketing operation of Webb's City at the time that I have heretofore mentioned, Friday, the 2nd—we will consider the time when I say time being as of the time of the picketing, which was December 2nd, December 3rd, and during the period that the picketing continued.

As I understand it, the picketing was participated in and carried on by students and other individuals who were members of the local chapter of the National Association for the Advancement of Colored People, is that correct?

A. That is correct.

[fol. 50] Q. Now, who directed that picketing to begin and to be carried on?

A. I did.

Q. You did?

A. Yes.

Q. Individually or as an officer of the association?

A. I did it. The issue was brought before the local chapter at a meeting and it was decided that the action of a boycott and a picketing would begin not only against Webb's City, but in other stores where negroes were denied the free use of all facilities therein.

Q. Are you familiar with the fact that Dr. Webb of Webb's City employs in the neighborhood of a hundred fifty negroes?

A. Yes, I am.

Q. As a matter of fact, are you familiar with the fact that Webb's City has a very substantial negro trade?

A. I am.

Q. Did the board of directors of your local chapter approve the actions which were taken relative to picketing?

A. They were. They did.

Q. And pursuant to resolution for the directions of your board of directors, you instigated or instituted a picket line which picketed Webb's City on the date which we have mentioned?

A. That is true.

Q. For what purpose, doctor, was this picketing insti- [fol. 51] tuted or instigated?

A. To bring to the attention of the citizens of St. Petersburg, white and negro, and to the management of the stores involved, that we felt that we were not being treated fairly or justly and that we had hoped that once this matter had been presented in the manner that it was presented to the public at large, that those persons and authorities and those stores involved would have a change of attitude and policy.

Q. Well, you talked to them before you ever started this picketing, didn't you?

A. I did.

Q. As a matter of fact, the picketing was instituted for the purpose of trying to convince, in this particular case, the officers, operators of Webb's City that they should comply with any request made by the local chapter of the NAACP, or that their business would be damaged?

Mr. Minnis: I am going to object to that question. Counsel, you may ask a question, but you can't testify and ask my client to confirm your testimony.

Mr. Bucklew: I am asking him a question. I am entitled on discovery deposition to cross examine the witness, at least that is my understanding of the rules of law.

Mr. Minnis: We are in accord with that.

Mr. Bucklew: Read that question back.

(Question read.)

[fol. 52] Q. Is that true or not?

A. That is not true.

Q. For what purpose was it instituted?

A. To tell the negro people who were doing business at Webb's that they were not being treated fairly and that they had the option of doing business with those persons who did or who did not treat them fairly.

Q. You did not, then, as I understand it from your testimony, endeavor to discourage either members of your own race or members of the white race from shopping at Webb's, is that correct?

A. That is not what I said. At least, not what I meant to say.

Q. All right. Let's put it this way: Isn't it true that your association by its actions and by certain handbills and blazers handed out, seek to discourage trade at Webb's City on account of their so-called attitude, isn't that true?

A. That is true, yes.

Q. And isn't it true that the picketing was instituted for the purpose of endeavoring to discourage trade because they wouldn't comply with your wishes?

A. That is true.

Q. Is there any contention on the part of the NAACP, the local chapter, that any different price or any discrimination, so far as the sale of merchandise, took place or was in operation so far as regards to negro or colored trade? [fol. 53] I mean by that, doctor, so we have a definite understanding, could you buy a rubber ball or a broom or a map or a mop or a radio or whatever Webb's City has to offer at the same price that I can buy it?

A. Yes, I could.

Q. There was no discrimination then so far as you know in the sale of merchandise by Webb's City to members of your race as distinguished from the white race?

A. Only in certain departments.

Q. And what was that?

A. Foods. That is, cafeteria and lunch counter.

Q. Did they charge you more in the cafeteria or lunch counter than they did the white people?

A. I am not aware that negroes had the option of buying in these departments; and if they did, under what circumstances they had the privilege of using these facilities, if and when a negro did any purchasing at either of these places, if they did any, which I don't know that they did, I am not aware that there were any differences in prices.

Q. If I understand your testimony correctly, and if I make a mistake, please correct me, I understand your testimony correctly, this picketing was instituted and instigated by the local chapter of the NAACP against Webb's City for the purpose of discouraging trade or shopping at Webb's City because it was your position, or the position of your organization, that Webb's City discriminated against members of your race in their cafeteria and restaurant de-[fol. 54] partments only, is that right, sir?

A. That is true, but there is an addendum to that.

Q. All right, please go ahead and state what it is

A. I am of the opinion that the body was of the opinion also that not only was there discrimination as far as use of a particular facility was concerned, a food service, but there was also discrimination in the employment area in that there are certain jobs available to citizens of this state and country at Webb's City who are white that are not available to negroes. And I refer specifically to such jobs as clerks and certain other positions considered to be white collar that negroes are not eligible for on the basis of race and race alone.

Q. Then, as I understand your testimony, that in addition to your objection to the manner in which Webb's City operated its cafeteria and lunch counter, that you also objected —that your organization also objected to the fact that members of your race can't hold any job in the store, is that rig.. ?

A. That is right.

Q. Would it be fair to say then that in your opinion the management, and specifically the individual known as Doc Webb, whose initials are J. E.—I think they are J. E., I am not sure. What are Doc's initials?

A. I think that is right, J. E., yes.

Q. Doesn't have the discretion or the ability to choose the personnel that he wants to work in various departments of [fol. 55] his store, is that—

A. No sir, that is not correct. I don't profess that he does not have the discretion nor the ability to select, but I personally charge that he would deny persons that are negroes who have the same qualifications as a white person for any given job. He would deny the negro the privilege of holding that job for the reason that he is a negro.

Q. Doctor, are you familiar with the fact that he has many loyal and satisfied negro employees which have been in the employment of Webb's City for years?

A. I am.

Q. Was this demonstration of picketing to Webb's City at the instigation of any of those employees?

A. It was not.

Q. Because they were unsatisfied?

A. It was not.

Q. Dissatisfied. Doctor, I will hand you a couple of blazers here. First, this one that states: "SHOP WITH YOUR FRIENDS. JOIN THE SELECTIVE BUYING PROTEST. CITIZENS COOPERATIVE COMMITTEE. Affiliates-NAACP, CORE. Ministerial Alliance . . ." and ask you to state whether or not you are familiar with that, if you have seen any of those?

A. I have seen this.

Q. And by whom were they prepared?

A. By the Committee on Selective Buying—

[fol. 56] Q. Of your—

A. —which is—

Q. Excuse me.

A. Which is a committee that I appointed as president of the NAACP.

Q. And that was of your committee of your organization known as your local chapter of the NAACP?

A. Yes sir.

Q. And were these distributed by your pickets and by other members of your organization in the vicinity of Webb's City during the time that this picketing was going on?

A. I never saw these being distributed on the premises at Webb's City, but I saw these being distributed elsewhere.

Q. Well now, I say the premises, I don't necessarily mean inside the store, but outside on the sidewalk.

A. I never saw them distributed outside of the store.

Q. Were they printed and prepared and distributed by your committee for the purpose of distribution to the buying public?

A. Yes.

Q. Whether Webb's City or whether any other store which did not pursue the policies which your committee thought were proper, is that right?

A. Well, I got lost on that, I'm sorry.

Mr. Bucklew: Read it back.

(Question read.)

[fol. 57] A. That question is a little ambiguous to me.

Q. Let me put it this way: At what localities were these blazers printed for the purpose of distribution?

A. They were printed in the city of St. Petersburg.

Q. I understand, but they were distributed to discourage business at those places which did not—I say, pursue the policies, which did not allow you or members of your race the privileges to which you thought you were entitled, is that correct?

A. That is correct.

Q. You understand me?

A. Yes sir.

Q. And Webb's City was one of those?

A. That is right.

Q. Who directed the manner in which these—who directed the manner in which the picketing should be done at Webb's City?

A. I did, Mr. Cox did and Attorney Williams did.

Q. Did you go down there and personally do that?

A. Yes.

Q. How many pickets did you have picketing, or did that vary according to the time of day—I am referring now to Webb's City. All of this testimony is referring to Webb's City.

A. That varied with the time of day and it varied with the day itself, really, the number—

Q. On Saturday, you would have a good many more [fol. 58] pickets than you would on Friday, would you?

A. I don't believe that was true. I think the greatest number of pickets appeared on the first day, which was Friday, I think.

Q. Friday?

A. That was the greatest number. After that, the number declined.

Q. Did they carry placards?

A. They did.

Q. And did you direct them to picket up and down in front of the entrances and exits to Webb's City?

A. We directed them, number one, to stay out of Webb's and off of Webb's premises. Number two, to walk the sidewalks. Number three, to not create any form of congestion whatsoever, nor to obstruct the entering of persons in and out of Webb's, the entry or exit of the persons in and out of Webb's. We further instructed them that they were to maintain a respectible distance, I believe of 15 feet, between pickets, and that they were to conduct themselves at all times as responsible individuals.

Q. If they did obstruct the entrances or exits to Webb's City, or obstructed the traffic going in and out of the doors of Webb's City by potential customers, that was contrary to your instructions?

A. That is correct.

Q. And that was solely upon their own initiative as [fol. 59] members—or they were members of the NAACP, were they not?

A. Many of these were members of the Youth Council, but there were many persons who were picketing who were not members of the NAACP, but they were interested parties.

Q. Doctor, during the picketing there, was some conversation overheard between some of those pickets, which would

indicate that some of them participating in this action were not what you would call residents of St. Petersburg, but had been imported from New Orleans and had been imported from Jacksonville?

A. I deny that.

Q. Are you familiar with any of those individuals?

A. I am not familiar with any persons.

Q. As I understand it then, you are not familiar with any of the people participating in this who were not—participating in this picketing at Webb's City who were not, so far as you know, residents of St. Petersburg, is that right?

A. I'm sorry, I lost you on that question, sir.

Q. I said, are you familiar with or acquainted with the fact that there were any participants in this picketing at Webb's City which were not residents, which were non-residents, put it that way, of St. Petersburg?

A. I am not familiar with any pickets—picketers who were not residents of St. Petersburg at the time of the picketing. I will admit that there perhaps were students who were non-residents of St. Petersburg engaged in picket-
[fol. 60] ing, but they were residents nonetheless by virtue of their living in this city at that time and being students at the junior college at that time. And I might say this, that I believe that that was—I can't recall any, as a matter of fact, but I make allowances for that possibility of there being persons who were non-residents participating. But I do know that the majority of these people were—

Q. My question was, as far as you personally know of your own knowledge.

A. As far as I know.

Q. As far as you are familiar.

A. As far as I am familiar.

Q. I understand. You can't be responsible for something you don't know about.

A. That's right.

Q. Were there any, so far as you know, non-resident or imported individuals, members of the National Association for the Advancement of Colored People, either the national association or some subsidiary, that were present at Webb's City during this picketing and having any—or participating in the direction or the carrying on of that picketing?

A. To my knowledge, there were none.

Q. If there were, you are not familiar with it, is that right, sir?

A. That is correct, and I doubt seriously that there were any. None were reported to me, at any rate.

[fol. 61] Q. Are you familiar with any disturbances or any efforts on the part of your pickets, when I say your pickets, the pickets that your association directed to picket Webb's City, are you familiar with any efforts or disturbances created by them or efforts on their part to discourage customers of going into Webb's City while this was going on?

A. I am not aware of any such incidents as that.

Q. I forgot to ask you, doctor, do you have any children?

A. I have.

Q. How many?

A. Three.

Q. And their ages?

A. Fifteen, eight and a new-born.

Q. Do you know whether your oldest child had any participation in this action at Webb's City?

A. I do know that she did not.

Q. She did not? All right. I am sure you will admit you know your baby didn't. Did you direct any of your members of your association to make telephone calls to Webb's City?

A. I certainly did not.

Q. If they made them, that was not within the—

A. Scope of our direction?

Q. Scope of your directions or your action against Webb's City.

A. That is correct.

[fol. 62] Q. You are not familiar then, as I understand it, whether any calls were or were not made?

A. I don't believe that there were any calls made by—

Q. I am asking you if you know, doctor.

A. It is impossible for me to know.

Q. That is right. How many members of your association here in St. Petersburg?

A. About two hundred.

Q. And they are engaged in various and sundry work?
A. That is correct.

Q. Are some of them engaged, so far as you know, in the taxi business; do you have any of your members that you are conscious or know of that are operators or drivers of taxicabs?

A. I know one who is a taxi driver.

Q. Did you give instructions, you, so far as you know—of course, you can't testify to any instructions you don't know about, but are you acquainted or familiar with any instructions which were given not to serve or to carry or transport employees—colored employees of Webb's City during this picketing?

A. Now I did not give such instructions and neither did any of the directors of the campaign give any such instructions to cab drivers.

Q. So far as you know, were there anybody else that gave any instructions, or was there any discussion of it at meetings you had while this was going on?

[fol. 63] A. There never was a discussion of what action the cab drivers were to take.

Mr. Bucklew: Now, I would like to have you mark this for identification, this blazer here which the doctor has identified as being printed and distributed by his organization, for identification as Plaintiff's Exhibit A.

(Whereupon, the instrument referred to was marked for purposes of identification as Plaintiff's Exhibit A.)

Q. I will hand you another blazer, doctor, that has on it, "NOTICE. WEBB'S CITY ENJOINS NAACP FROM PICKETING." Are you familiar with that?

A. Part of it.

Q. Well now, when you say part of it, could you explain that?

A. Well, the ones that I read didn't have, "NOTICE. Read Carefully." on it.

Q. It just had the rest of what is on that blazer, is that correct?

A. That is right.

Q. And by whom was that prepared?

A. By the committee.

Q. And was it—by the committee of the local chapter of the NAACP?

A. That is correct.

[fol. 64] Q. Was it likewise distributed by members of your chapter?

A. That is correct.

Q. Under and pursuant to your directions and the directions of the directors and other officers?

A. That is correct.

Q. How many directors did you have, doctor?

A. Eight.

Q. Are they the same—

A. Wait a minute. Board of directors—

Q. Exclusive of officers.

A. Yes, eight.

Q. Are they the same directors presently that were directors at the time this action took place at Webb's City?

A. They are.

Q. Will you give the names of those directors?

A. Yes. Dr. Harry Taliaferro. Mrs. B. N. Jones. Mrs. [illegible] Sawyer. Samuel Howell. Dr. Gilbert Leggett. I think Attorney White is on that probably, board. To my knowledge, this is all I can recall.

Q. Attorney White, is that the White that is sitting here and that is associated with the firm that represents you or your association, of Minnis & Williams?

A. Yes sir.

Q. Either one of the other lawyers, Minnis and Williams, members of the board of directors?

[fol. 65] A. They are not.

Q. Doctor, when did you all decide to picket Webb's City?

A. In November, the fourth Sunday in November, at a meeting—that was at the fourth Sunday in November in 1960.

Q. Fourth Sunday?

A. Yes sir.

Q. And the picketing was to begin when?

A. At the earliest possible date after that meeting, after such procedures and methods were worked out by the committee.

Q. Now, by the work methods, what do you refer to there specifically?

A. Well, we had to make preparations for it. The signs had to be painted, prepared. The word method might have been an improper word—

Q. Let's say details, would that be better?

A. Details, yes.

Q. And when did this picketing actually commence?

A. I think it was December 2nd.

Q. On a Friday morning?

A. Yes sir.

Q. Were you present at the time it started?

A. I was.

Q. How many pickets did you put in action at that time?

A. At Webb's—

Q. Webb's is what I am talking about.

[fol. 66] A. About thirty.

Q. Thirty pickets?

A. About that.

Q. And you picketed both sides of the store where the people go in and out, is that correct?

A. That is correct, sir.

Q. For the purpose of the record, what streets were they where you enter Webb's?

A. 2nd Avenue South and 9th Street.

Q. And 9th Street? How many entrances do they have on 2nd Avenue South, do you know?

A. I know of two.

Q. And on 9th Street?

A. Two.

Q. And these pickets were furnished with large banners, were they not?

A. Not—well,—

Q. Placards?

A. Placards, yes.

Q. Big cardboard placards?

A. Yes sir.

Q. And do you recall what the wording was that you had put on those placards?

A. My memory for that is vague and I would not like to state that.

[fol. 67] Q. We have a hearing before the Court at which time there will be certain pictures that were taken. You would recognize the wording on those placards in those pictures, would you not?

A. Yes sir.

(Discussion held off the record.)

Q. Doctor, are you personally familiar with whether or not any threats were made by any members of your association? By association, I am referring to your local chapter, toward any of the negro or colored help that Doc Webb has employed or is employing.

A. I am not familiar with any threats.

Q. If any were made, you are entirely unacquainted with that?

A. That is correct.

Q. So far as the lunch counter situation is concerned, what have they got over there at Webb's in the way of eating facilities, do you know? Do they have a cafeteria or lunch counter; what do they have?

A. They have a lunch counter and a cafeteria.

Q. Are they separate?

A. Yes, they are separate.

Q. How do you get to those?

A. There are two entrances, one on the 9th Street side and there is one from the 8th Street side.

Q. And do you—

[fol. 68] A. That is the lunch counter.

Q. Are you talking about the lunch counter? You walk in—is that off the street?

A. That is off of the street.

Q. But of course the lunch counter—we are talking about the lunch counter now, that is inside—

A. Inside the building, yes.

Q. But you don't enter the lunch counter directly from the entrance off the street?

A. No, you do not.

Mr. Williams: For the record, I am going to interpose an objection to this line of questioning for the reason this information is peculiar to the knowledge of the plaintiff.

Mr. Bucklew: The purpose of the question is to determine the familiarity of the witness with the lunchroom operation and likewise the cafeteria operation.

Q. Do you know, doctor—

Mr. Minnis: Do you mean operation or location?

Mr. Bucklew: What did I say there?

(Question read.)

Mr. Bucklew: Operation and location—

Q. Doctor, are you familiar with how persons wishing to patronize, first we will say the lunch counter, how they gain access or entrance to the lunch counter?

A. I am.

[fol. 69] Q. What is that?

A. There is a gate with a bar across it.

Q. Would it be fair to say that is more or less in the way of an operation of a turnstile?

A. A turnstile, yes.

Q. Like a turnstile at a football game or—

A. Yes, a turnstile and as one enters, there is a ticket that he withdraws from a machine and enters the lunch counter.

Q. You just go through the turnstile and it ejects a ticket which the customer going through the turnstile takes with him, is that it?

A. Yes.

Q. How about the cafeteria?

A. I have never been down there.

Q. You don't know about that? You don't know whether that has the same method of entering or not?

A. I don't.

Q. And what, if you know, what was the objection to the manner in which Webb's City operated the lunch counter, so far as your organization is concerned?

A. It did not admit negroes.

Q. Did you have to have a ticket to go through this turnstile before you go through it or what?

A. You had to go through the turnstiles and negroes had made attempts to get through the turnstile and were denied entrance to that lunch counter.

[fol. 70] Q. In other words, some employees or someone in Webb's had directed or refused—strike out the word directed—had refused to allow members of the negro race to go through the turnstile, is that correct?

A. That is correct.

Q. So far as the—do you know who that was?

A. No, I don't.

Q. So far as the actual operation of the lunch counter or the cafeteria, do you know whether or not that has ever been closed down as has been done in some other cities where they have what I think they call "sitdown" deals; had this ever been done?

A. An attempt was made to "sit down" at Webb's City some—

Q. Where?

A. In the lunch counter.

Q. In the lunch counter.

A. In the month of June, I believe, or perhaps some time even earlier than that. And the demonstrators or the persons who attempted to "sit down" were turned back at the turnstile and they never were allowed to enter into the area of the lunch counter, and consequently it was never closed.

Q. Do you know whether or not the same procedure was attempted in the cafeteria?

A. I believe not. I don't know.

Q. Your complaint then was, or is—strike that out.

The complaint then of your association and the objection [fol. 71] of your association to the manner in which Webb's City operated its lunch counter was that members of your race were not allowed to pass through the turnstile, which is the only entrance into the lunch counter, is that correct, to use the lunch counter?

A. That is correct.

Q. And following your—or, following the inability of negroes to pass through that turnstile and use the lunch counter, you then took the action which we—you have testified here today, namely, picketing Webb's, is that right?

A. Yes.

Q. Doctor, I'm sorry I have delayed you so long. That is all as far as I am concerned.

A. May I correct myself on naming of the directors?

Q. Yes.

A. Attorney White is not a member of the board of directors. I believe that I got that impression because I had thought of asking him, and as a matter of fact, did I ask you?

Mr. White: I believe you mentioned, we talked about it.

A. I asked him to serve and he didn't acquiesce.

Mr. Bucklew: That's all.

Mr. Minnis: It's my understanding, Counsel, that you are through with this witness?

Mr. Bucklew: That is correct.

Mr. Minnis: You may be excused then, doctor.

[fol. 72]

DEPOSITION OF C. BETTE WIMBISH

C. BETTE WIMBISH, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bucklew:

Q. State your name, please.

A. C. Bette Wimbish.

Q. And are you the wife of Dr. Wimbish?

A. I am.

Q. You are one of the defendants in this case, are you not?

A. I think so.

Q. You are named as a defendant, we will put it that way.

A. Yes.

Q. Where do you live?

A. 3217—15th Avenue South, St. Petersburg.

Q. That is the same address that the doctor gave as his residence, is it not?

A. It is.

Q. And how long have you lived in St. Petersburg?

A. Oh, almost ten years; nine, ten years.

Q. And previous to that?

A. Tampa, Florida.

Q. Were you born in Florida?

A. I was.

[fol. 73] Q. In Tampa?

A. No, Perry, Florida.

Q. Are you a member of the local chapter of the St. Petersburg chapter of the National Association for the Advancement of Colored People?

A. I am not.

Q. You are not a member?

A. No.

Q. Have you ever been a member?

A. Not recently.

Q. I just said have you ever been a member?

A. Yes.

Q. And how long ago was that?

A. Maybe fifteen or sixteen years, something like that. I don't know—I'd have to get a pencil and figure it out.

Q. Approximately, there is no trick in the date feature. You have been a member of that association, so how long ago was it you say, fifteen or sixteen years ago?

A. Something like that.

Q. Where were you a member?

A. In Tampa.

Q. In Tampa? Do you recall who was the head of the chapter in Tampa at that time?

A. No, I don't.

Q. It wasn't the Reverend Leon Lowery?

[fol. 74] A. No, I am not aware that he was.

Q. You have not been a member then since you moved to St. Petersburg, is that correct?

A. I have not.

Q. Did you attend any of the meetings which were held here of the St. Petersburg chapter of the NAACP when they were discussing or endeavoring to determine what action they would take so far as Webb's City was concerned?

A. I did not.

Q. Did you participate in any way in the operation or the carrying out of the picketing which was done by the local chapter in December of 1960?

A. I did not.

Q. Have you ever been in Webb's City?

A. I have.

Q. As a customer?

A. Quite often.

Q. Are you familiar with the fact that there are a good many colored people or members of the negro race that are employed in Webb's City?

A. I am.

Q. Did you have anything to do with the—have any knowledge or participate in the wording of these blazers that the doctor has identified?

A. I did not.

[fol. 75] Mr. Bucklew: I overlooked having marked for identification, is there any objection?

Mr. Williams: No.

Mr. Bucklew: I want to have that blazer identified as Plaintiff's Exhibit B that I had Dr. Wimbish identify.

(Whereupon, the instrument referred to was marked for purposes of identification as Plaintiff's Exhibit B.)

Mr. Bucklew: I have no further questions.

Mr. Minnis: I take it that this concludes your interrogation of the defendant?

Mr. Bucklew: It does.

Mr. Williams: Can we stipulate—do you want to stipulate to waiver and signing?

Mr. Bucklew: Yes.

Mr. Minnis: We will do that and would you let the record show that at 11:24 the plaintiff concluded the inquisition of the defendant witnesses—

Mr. Bucklew: You mean the interrogation?

Mr. Minnis: Well, interrogation, I will use that, and then at that time, Doc Webb was not available.

Mr. Bucklew: Let the record further show that the plaintiff at this time offers to produce for examination and interrogation by the defendant—Counsel for the defendant, Dr. Wimbish, at any time beginning Monday, March 6th.

[fol. 76] Mr. Minnis: The plaintiff wishes to point out that —no, the defendants wish to point out that it finds it is impractical to prepare its defense adequately because of the

absence of Doc Webb and the proffer of his appearance on March 6th or 7th immediately prior to the all-day hearing on March 8th, would not allow the defendants an opportunity to obtain the transcript and study same prior to the hearing on March 8th.

Mr. Bucklew: And as Counsel for the plaintiff, as I understand it then, there is no request or demand upon the defendants or Counsel for the defendants, Doc Wimbish, to interrogate or to have Doc Webb appear for interrogation at any time on either Monday or Tuesday previous to the hearing?

Mr. Minnis: It is our position that it is far too late for us to do anything about it.

Mr. Bucklew: Counsel for the plaintiff will further state that defendants have had ample opportunity since the 7th day of December, 1960, in which to serve notice and interrogate the plaintiff and that—and Counsel for the plaintiff therefore submits at this hearing that the position of the defendant is without merit.

Mr. Minnis: Just in accordance with the Rules, that's all.

[fol. 77] Reporter's certificate to foregoing transcript (omitted in printing).

SHOP WITH YOUR FRIENDS

BUY WHERE YOUR DOLLARS GET THE SAME RESPECT

AS ANYONE ELSE'S DOLLAR AT ALL COUNTERS

*

Here are some Friends who will treat you with [illegible] and respect

and serve you at all [illegible]

GRANDWAY STORES

LANCASTER'S

MONTGOMERY WARD

SEARS ROEBUCK

If you must shop at other stores - please shop [illegible] those that

Do Not Have Lunch Counters

*

JOIN THE SELECTIVE BUYING PROTEST

*

CITIZENS COOPERATIVE COMMITTEE

Affiliates — NAACP, CORE, Ministerial Alliance, Non-Partisan Voters League, Fraternal and Other Civic Organizations

[fol. 79]

PLAINTIFF'S EXHIBIT B

(See opposite) ☞

Read Carefully **NOTICE** *Read Carefully*

Webb's City Enjoins NAACP From Picketing.

Let's Observe The Injunction Pending Further Court Action.

OUR POLICY IS UNCHANGED

KEEP THE FAITH

Shop ONLY Where You Can Use Your Facility in the Store or Shop Where There are NO LUNCH COUNTERS at All.

ST. PETERSBURG BRANCH NAACP

1427 - 22ND STREET SOUTH

Other Civic Organizations

[fol. 80] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

REPLY TO MOTION TO STRIKE PLEADINGS—Filed March 8, 1961

Comes now the Plaintiff, Webb's City, Inc., a Florida corporation, by and through its undersigned counsel, and files this Reply to the Motion heretofore filed by the Defendants, Ralph M. Wimbish and Bette C. Wimbish, his wife, to Strike Pleadings and Dismiss Complaint in the above entitled cause, and says:

1. That the present suit was instituted by the plaintiff on the 6th day of December, A.D., 1960, and thereafter, the defendants, Ralph M. Wimbish and Bette C. Wimbish, his wife, filed an answer and said cause has been at issue since on or about the first day of January, A.D., 1961.

2. That on the 23rd day of February, A.D., 1961, the plaintiff, Webb's City, Inc., gave notice to all counsel for the defendants that it desired to take the discovery depositions of Ralph M. Wimbish and Bette C. Wimbish, his wife, in the office of the Official Court Report in the County Building in St. Petersburg, on Friday, March 3, 1961, at 10:00 A.M.; that subsequent to said notice being served upon the defendants, the plaintiff received notice on Mon-[fol. 81] day, February 27, 1961, through the mail, that the counsel for the defendants, Ralph M. Wimbish and Bette C. Wimbish, his wife, desired to take the discovery deposition of Dr. J. E. Webb, President of the plaintiff corporation, at the same time that the plaintiff had given notice of taking the depositions of Ralph M. Wimbish and Bette C. Wimbish, his wife, to-wit: March 3, 1961, at 10:00 A.M.

3. That the plaintiff will further show that the President of the plaintiff corporation was, at said time, in Miami, Florida, on a business trip and was unable, but not unwilling, to be present on March 3, 1961, at 10:00 A.M., and counsel for the defendants, Ralph M. Wimbish and Bette C. Wimbish, his wife, were so advised; that said Dr. J. E.

Webb was not scheduled to return from Miami on said business trip until noon on Tuesday, March 7, 1961, but in view of the pending hearing on Wednesday, March 8, 1961, that counsel for the plaintiff, at said time, offered to produce Dr. J. E. Webb for interrogation at any time beginning at 9:00 A.M. on Monday, March 6, 1961, and further offered to postpone the hearing set before this honorable court on March 8, 1961, in the event that counsel for the defendants, Ralph M. Wimbish and Bette C. Wimbish, his wife, desired such a contingence, all of which was refused by the attorneys for the defendants, Ralph M. Wimbish and Bette C. Wimbish, his wife.

4. That the plaintiff, further replying to said Motion, unequivocally states that the allegation in the Motion to Strike to the effect that Dr. J. E. Webb refused to be examined is absolutely untrue, and made solely for the purpose of laying the foundation or premise for the filing of the Motion to Strike; that the record made by the Official Court Reporter in St. Petersburg on Friday morning, March 3, 1961, will reflect that the counsel for the plaintiff offered to produce the President of the plaintiff corporation [fol. 82] for interrogation at any time beginning at 9:00 A.M. on Monday, March 6, 1961, and said record will further reflect that the defendants refused said proffer.

The plaintiff respectfully requests the Court to deny the aforesaid Motion, in view of the facts hereinabove set forth, and as also shown by the transcript of the Court Reporter attached to this answer and by reference made a part of same.

Sam Bucklew, of Bucklew, Ramsey & Phillips, 403 Morgan Bldg., Tampa, Florida, Attorneys for the Plaintiff.

CERTIFICATE OF SERVICE (omitted in printing).

Duly sworn to by Sam Bucklew, jurat omitted in printing.

[fol. 83] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

ANSWER AND DEFENSES—Filed March 10, 1961

Comes now the Defendant, National Association for the Advancement of Colored People, a non-profit New York corporation, authorized to do business in the State of Florida by and through their undersigned Attorneys and hereby adopts the Answer and Defenses hereinbefore filed on behalf of Ralph M. Wimbish and C. Bette Wimbish, his wife as the Answer and Defenses for the above named corporate defendant, in each and every particular, with the exception of the fourth defense which is an individual defense of C. Bette Wimbish, which cannot be adopted by the corporate defendant.

Robert L. Carter, 20 West 40th Street, New York, New York;

Frank H. White, 911—22nd Street South, St. Petersburg, Florida;

Frank W. Williams, of Minnis and Williams, 624—22nd Street South, St. Petersburg, Florida;
Attorneys for Defendants.

[fol. 84] CERTIFICATE OF SERVICE (omitted in printing).

[fol. 85] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

SUBPOENAS OF WITNESSES, JAMES WILSON, ET AL., AND SHERIFF'S RETURNS THEREON—Filed March 14, 1961

No. of Case 57,341

In the Name of the State of Florida: To James Wilson, c/o Blue Star Cab Company, 13th Avenue & 22nd Street So., Samuel Adams, c/o St. Petersburg Times, Rev. J. L. Fennell, 2027—7th Avenue South.

Greeting:

We Command You to be before one of the Judges of our said Court at Clearwater, Florida, on the 8th day of March, 1961, at 10:00 o'clock A. M. to testify in the case of Webb's City, Inc., Plaintiff, versus National Association for the Advancement of Colored People, Defendant, on the part of Defendant, to whom you must look for your fees, and this you shall in no wise omit.

Witness: Avery W. Gilkerson, Clerk of said Court, and the Seal of said Court at Clearwater, Florida, this

(Seal)

Avery W. Gilkerson, Clerk, By John A. O'Rourke, Deputy Clerk.

Isaiah W. Williams, Attorney for Defendant
To All and Singular the Sheriffs of the State of Florida.

[fol. 86] SHERIFF'S RETURN

Came to hand the 6th day of March A.D., 1961 and executed the same in Pinellas County, Florida, on the 6th day of March A.D., 1961 by delivering a true copy of the original and explaining the contents thereof to James Wilson, within named witness, and at the same time tendering the legal witness fee of $5.00.

And executed the same in Pinellas County, Florida on the 7th day of March A.D. 1961 by delivering a true copy of the original and explaining the contents thereof to Rev. J. L. Fennell, within named witness, and at the same time tendering the legal witness fee of $5.00.

And the same is herewith returned, not served, as to the within named witness, Samuel Adams, who after diligent search and inquiry could not be found in the limits of Pinellas County, Florida.

Don Genung, Sheriff, Pinellas County, Florida, By Hughie E. Lisenby, Deputy Sheriff.

[fol. 87] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

No. of Case 57,341

In the Name of the State of Florida:

To Leon Cox, c/o Gibbs Junior College, Mrs. Minnie H. Johnson, 533—21st Street South, Willie Tarver, 373 Jackson Street North.

Greeting:

We Command You to be before one of the Judges of our said Court at Clearwater, Florida, on the 8th day of March, 1961, at 10:00 o'clock A.M. to testify in the Case of Webb's City, Inc., Plaintiff, versus National Association for the Advancement of Colored People, Defendant, on the part of Defendant, to whom you must look for your fees, and this you shall in no wise omit.

Witness: Avery W. Gilkerson, Clerk of said Court, and the Seal of said Court at Clearwater, Florida, this

(Seal)

Avery W. Gilkerson, Clerk, By John A. O'Rourke, Deputy Clerk.

Isaiah W. Williams, Attorney for Defendant

To All and Singular the Sheriffs of the State of Florida.

[fol. 88] SHERIFF'S RETURN

Came to hand the 6th day of March A.D., 1961 and executed the same in Pinellas County, Florida, on the 6th day of March A.D., 1961 by delivering a true copy of the original and explaining the contents thereof to Leon Cox, within named witness, and at the same time tendering the legal witness fee of $5.00.

And executed the same in Pinellas County, Florida on the 7th day of March A.D. 1961 by delivering a true copy of the original and explaining the contents thereof to Mrs. Minnie H. Johnson, within named witness, and at the same time tendering the legal fee of $5.00.

And executed the same in Pinellas County, Florida on the 7th day of March A.D. 1961 by delivering a true copy of the original and explaining the contents thereof to Alex Tarver, father of Willie Tarver, he being a member of the family over the age of 15 years, at their usual place of abode, for Willie Tarver, within named witness, and at the same time tendering the legal witness fee of $5.00.

Don Genung, Sheriff, Pinellas County, Florida, By Hughie E. Lisenby, Deputy Sheriff.

[fol. 89] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

No. of Case 57,341

In the Name of the State of Florida:

To Theodore Lockhart, c/o Gibbs Junior College, Henry Lyons, c/o Gibbs Junior College, Mary Walker, c/o Gibbs Junior College, Louis Harper, c/o Gibbs Junior College.

Greeting:

We Command You to be before one of the Judges of our said Court at Clearwater, Florida, on the 8th day of March, 1961, at 10:00 o'clock A.M. to testify in the case of Webb's City, Inc., Plaintiff, versus National Association for the Advancement of Colored People, Defendant, on the part of Defendant, to whom you must look for your fees, and this you shall in no wise omit.

Witness: Avery W. Gilkerson, Clerk of said Court, and the Seal of said Court at Clearwater, Florida, this

(Seal)

Avery W. Gilkerson, Clerk. By John A. O'Rourke, Deputy Clerk.

Isaiah W. Williams, Attorney for Defendant
To All and Singular the Sheriffs of the State of Florida.

[fol. 90] SHERIFF'S RETURN

Came to hand the 6th day of March A.D., 1961 and executed the same in Pinellas County, Florida, on the 6th day of March A.D., 1961 by delivering a true copy of the original and explaining the contents thereof to Theodore Lockhart, Henry Lyons, and Louis Harper, within named witnesses, and at the same time tendering the legal witness fee of $5.00 each.

And executed the same in Pinellas County, Florida on the 7th day of March A.D., 1961 by delivering a true copy of the original and explaining the contents thereof to Mary Walker, within named witness, and at the same time tendering the legal witness fee of $5.00.

Don Genung, Sheriff, Pinellas County, Florida. By Hughie E. Lisenby, Deputy Sheriff.

[fol. 91] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

No. of Case 57,341

In the Name of the State of Florida:

To Lt. Jack Healy, c/o St. Petersburg Police Department, Sgt. Russell Barnes, c/o St. Petersburg Police Department, Officer George Vinson, c/o St. Petersburg Police Department.

Greeting:

We Command You to be before one of the Judges of our said Court at Clearwater, Florida, on the 8th day of March, 1961, at 10:00 o'clock A.M. to testify in the case of Webb's City, Inc., Plaintiff, versus National Association for the Advancement of Colored People, Defendant, on

the part of Defendant, to whom you must look for your fees, and this you shall in no wise omit.

Witness: Avery W. Gilkerson, Clerk of said Court, and the Seal of said Court at Clearwater, Florida, this

(Seal)

Avery W. Gilkerson, Clerk, By John A. O'Rourke, Deputy Clerk.

Isaiah W. Williams, Attorney for Defendant
To All and Singular the Sheriffs of the State of Florida.

[fol. 92] SHERIFF'S RETURN

Came to hand the 6th day of March A.D., 1961 and executed the same in Pinellas County, Florida, on the 6th day of March A.D., 1961 by delivering a true copy of the original and explaining the contents thereof to Lt. Jack Healy, Sgt. Russell Barnes, Officer George Vinson, within named, witnesses, and at the same time tendering the legal witness fee of $5.00 each.

Don Genung, Sheriff, Pinellas County, Florida, By Hughie E. Lisenby, Deputy Sheriff.

[fol. 93] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

No. of Case 57,341 Chancery

In the Name of the State of Florida:

To John F. Healy, St. Petersburg Police Department, St. Petersburg, Florida.

Greeting:

We Command You to be before one of the Judges of our said Court, Hon. Jack White, at the Court House in Clearwater, Florida, on the 8th day of March, 1961, at 10:00 o'clock A.M. to testify in the case of Webb City, Inc., Plaintiff, versus National Association for Advancement of Colored People et al., Defendant, on the part of Plaintiff-

Defendant, to whom you must look for your fees, and this you shall in no wise omit.

Witness: Avery W. Gilkerson, Clerk of said Court, and the Seal of said Court at Clearwater, Florida, this 7 day of March, 1961.

Avery W. Gilkerson, Clerk, By John A. O'Rourke, Deputy Clerk.

(Seal)

Sam Bucklew, Attorney for Plaintiff-Defendant
To All and Singular the Sheriffs of the State of Florida.

[fol. 94] SHERIFF'S RETURN

Came to hand the 7th day of March A.D., 1961 and executed the same in Pinellas County, Florida, on the 7th day of March A.D., 1961 by delivering a true copy of the original and explaining the contents thereof to John F. Healy, within named witness, and at the same time tendering the legal witness fee of $5.00.

Don Genung, Sheriff Pinellas County, Florida, By Hughie E. Lisenby, Deputy Sheriff.

[fol. 95]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

No. of Case 57,341

In the Name of the State of Florida:

To H. F. Deitrich, St. Petersburg Police Department, St. Petersburg, Florida.

Greeting:

We Command You to be before one of the Judges of our said Court, Hon. Jack White, at the Court House in Clearwater, Florida, on the 8th day of March, 1961, 10:00 o'clock A.M. to testify in the case of Webb's City, Inc., a Florida corporation, Plaintiff, versus National Association for Advancement of Colored People et al., Defendant, on the part of Plaintiff-Defendant, to whom you must look for your fees, and this you shall in no wise omit.

Witness: Avery W. Gilkerson, Clerk of said Court, and the Seal of said Court at Clearwater, Florida, this 7 day of March, 1961.

(Seal)

Avery W. Gilkerson, Clerk, By John A. O'Rourke, Deputy Clerk.

Sam Bucklew, Attorney for Plaintiff-Defendant
To All and Singular the Sheriffs of the State of Florida.

[fol. 96] SHERIFF'S RETURN

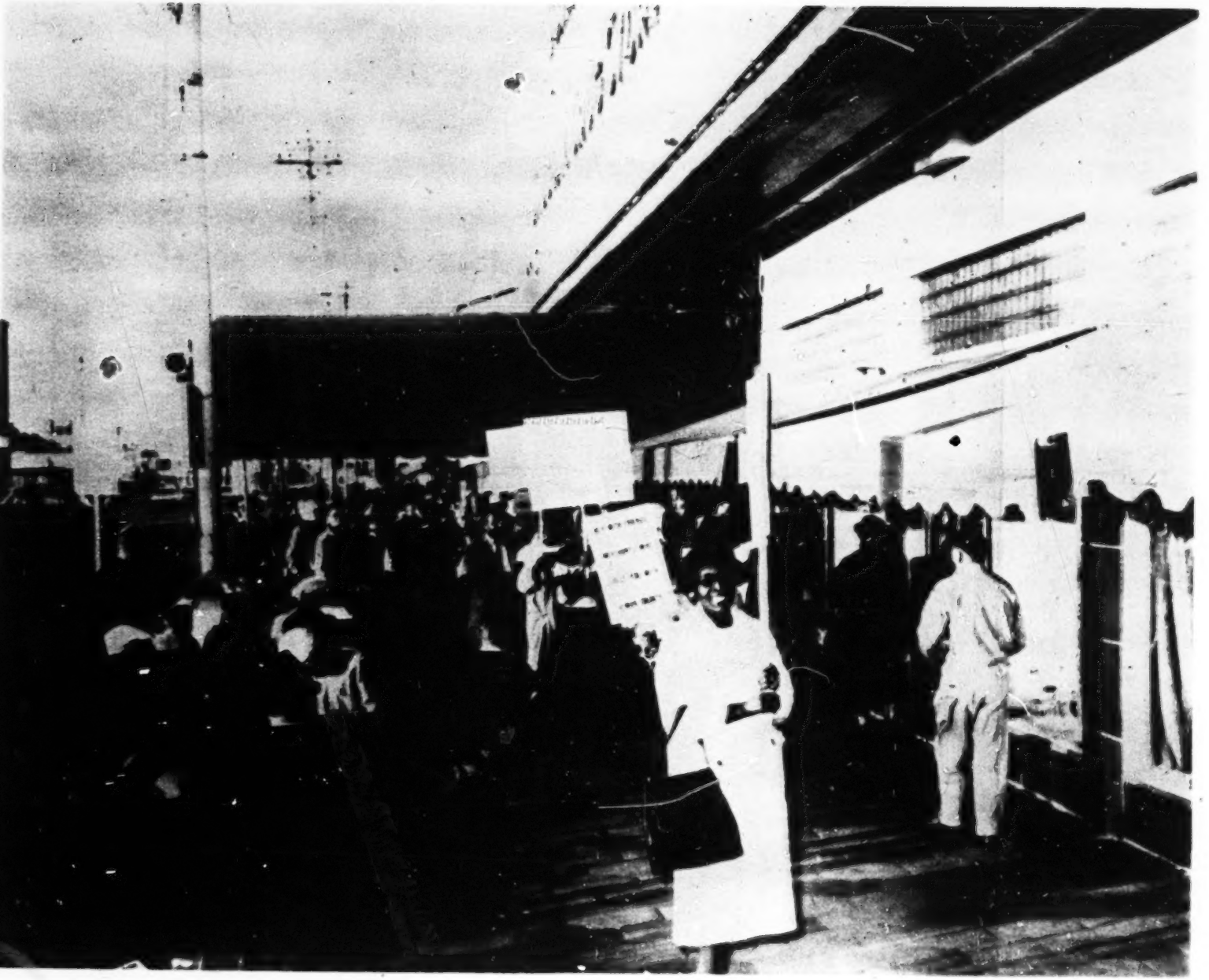
Came to hand the 7th day of March A.D., 1961 and executed the same in Pinellas County, Florida, on the ..... day of March A.D., 1961 by delivering a true copy of the original and explaining the contents thereof to H. F. Deitrich, within named, witness, and at the same time tendering the legal witness fee of $5.00.

Don Genung, Sheriff, Pinellas County, Florida, By Hughie E. Lisenby, Deputy Sheriff.

[fol. 97]

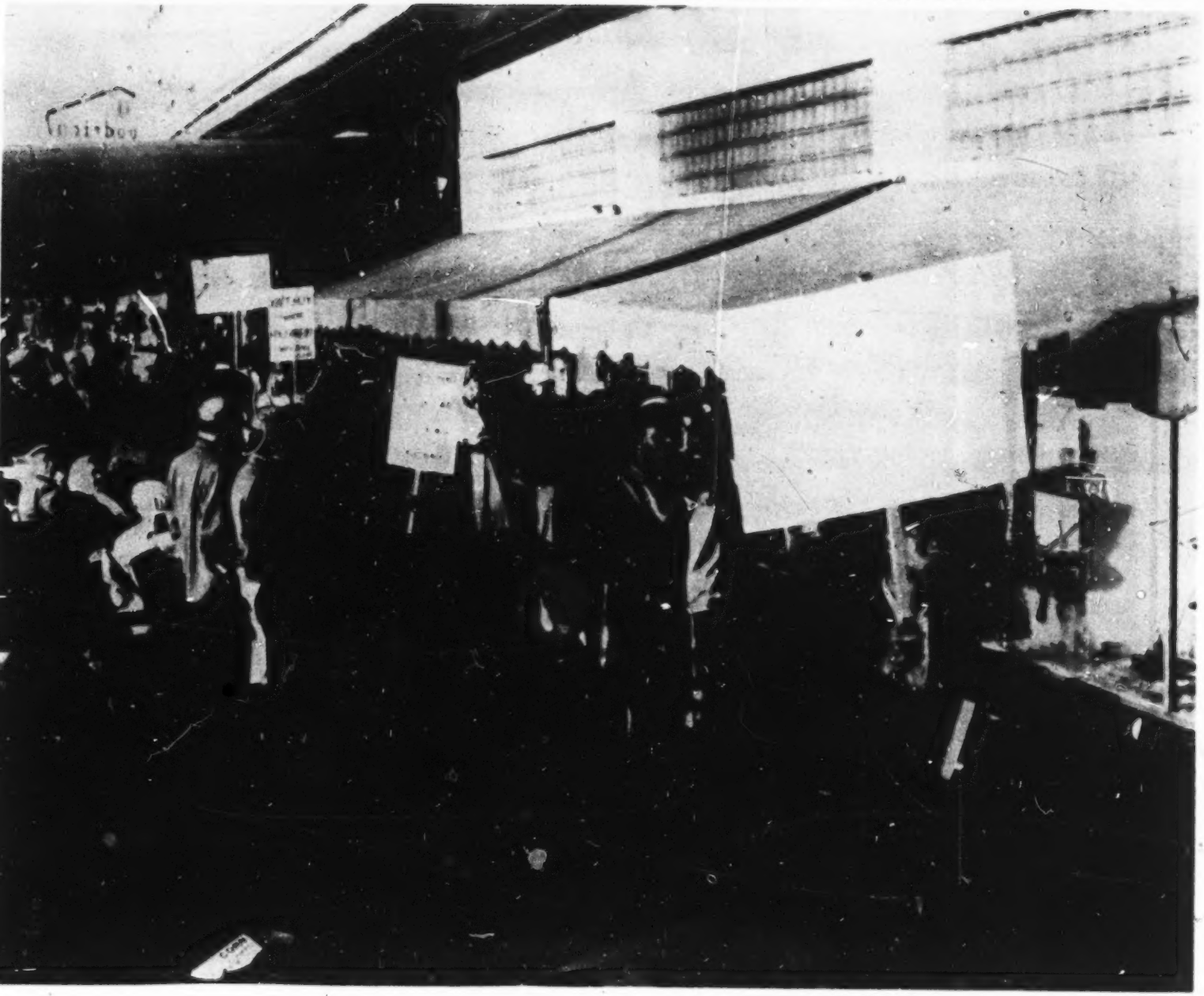
PLAINTIFF'S EXHIBIT No. 1

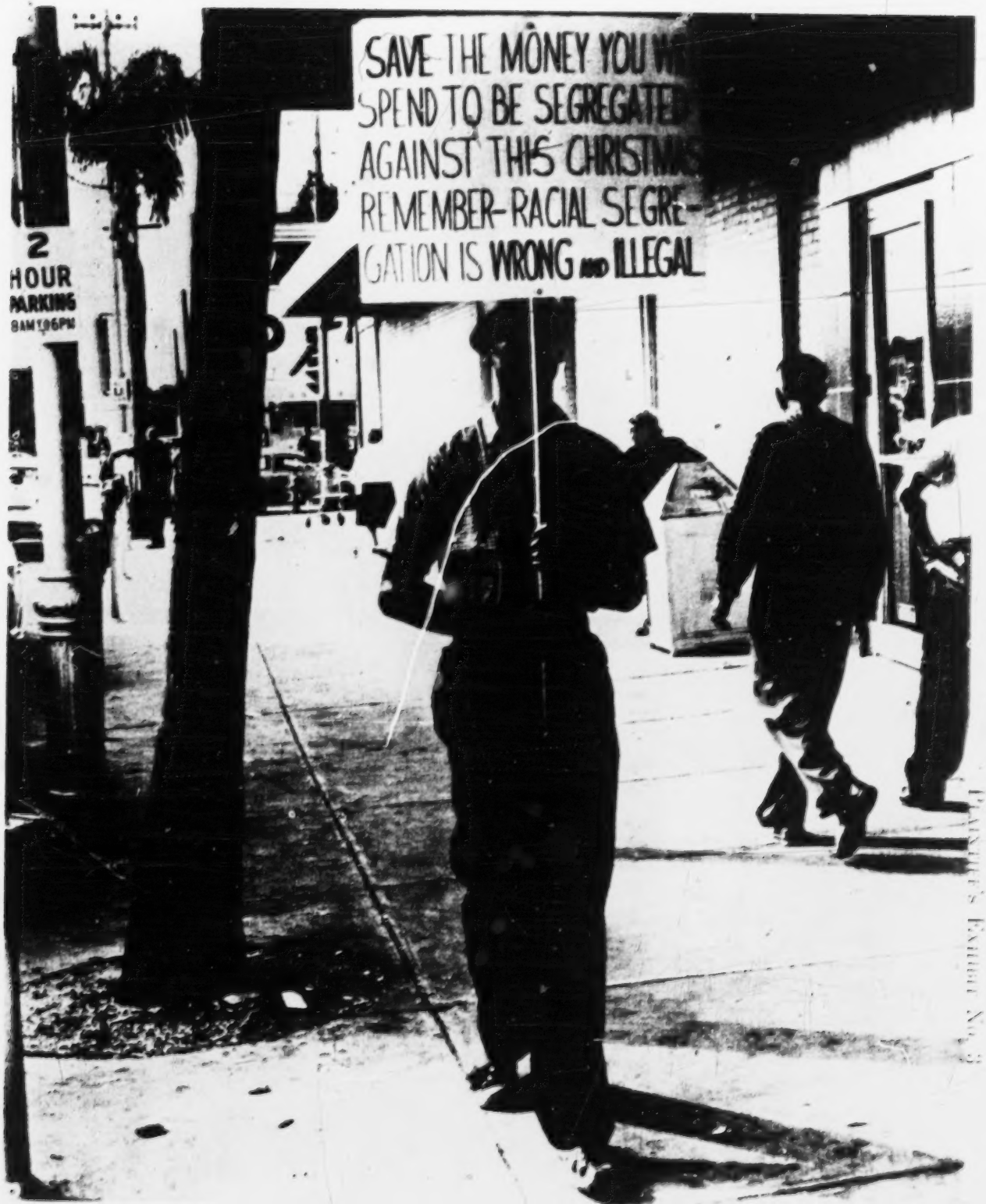
(See opposite) ☞



[fol. 98]

PLAINTIFF'S EXHIBIT No. 2





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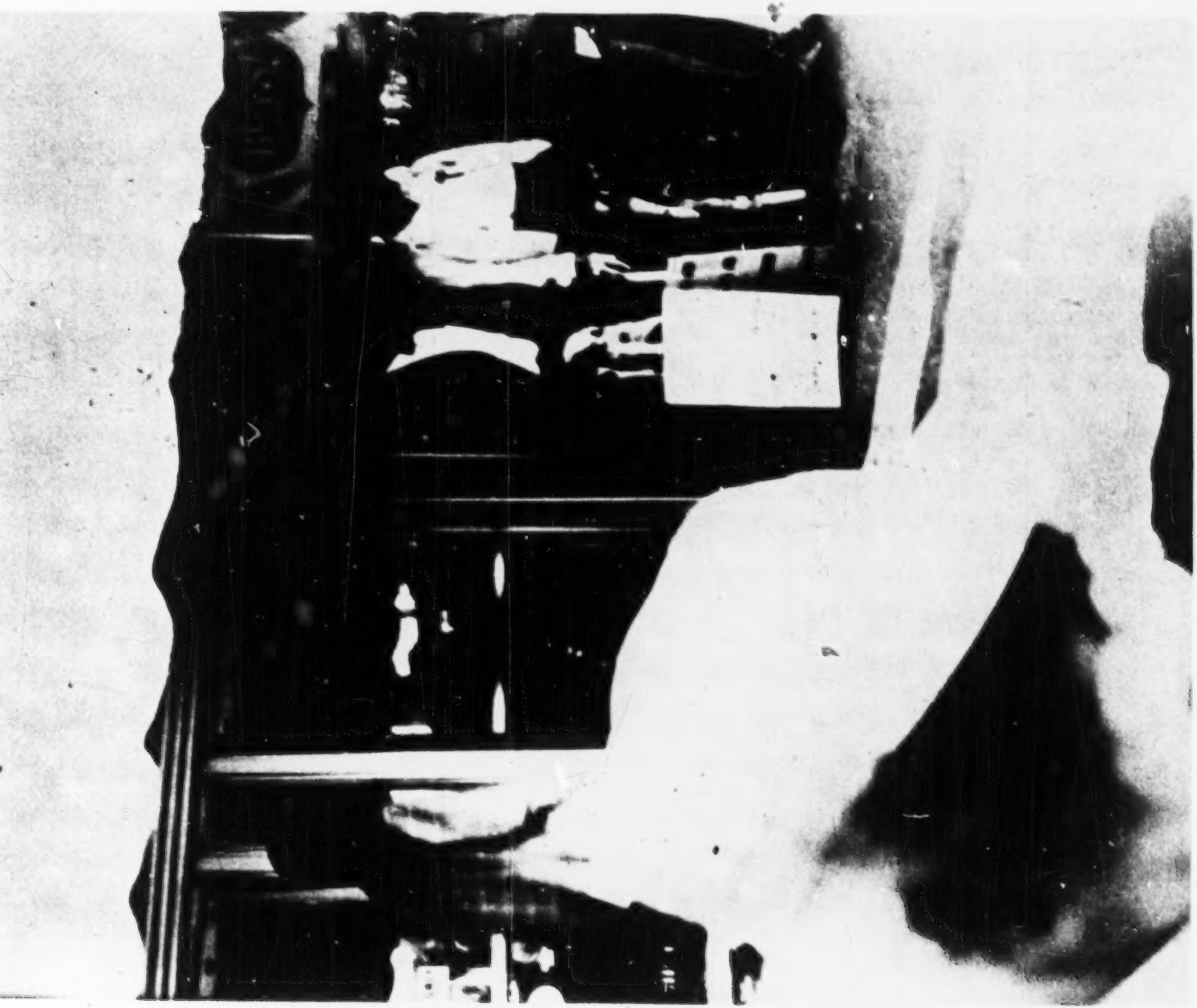
PAINTER'S EXHIBIT No. 9

PLAINTIFF'S EXHIBIT No. 4



[R. 101]

PLAINTIFF'S EXHIBIT No. 5



PLAINTIFF'S EXHIBIT No. 6



[fol. 103]

PLAINTIFF'S EXHIBIT No. 7



[fol. 104]

PLAINTIFF'S EXHIBIT No. 8

CASE RECORD

Arraignment ..... 19.....; Plea guilty; Trial December 7, 1960

Witnesses:

Attorneys { City Larry Keough / Deft. ..... } { Frederick J. Saccucci / ..... / ..... }

The Court having found defendant Jack Morrison, Jr. guilty as charged, it is the judgment of the Court and sentence of the law that defendant Jack Morrison, Jr. be incarcerated in the city jail for (10) ten days.
Failure to pay said fine and costs defendant to serve ..... days additional.

Laurence D. Childs
Judge—Clerk.

Defendant paroled / Sentence suspended } Conditional upon:

Good behavior for period of ..... days.
Defendant refraining from operating motor vehicle in the city of St. Petersburg for period of .....

Notice of Appeal ..... 19....; Bond $..... .....
Posted with .....; Approved by .....

.....
Clerk.

Affirmed ..... 19....
Reversed ..... 19....

[fol. 105]

IN THE MUNICIPAL COURT, ST. PETERSBURG, FLORIDA

CITY OF ST. PETERSBURG

CITY OF ST. PETERSBURG, FLORIDA

vs.

JACK MORRISON, JR., 1221 22ND ST. SO.

Before me, a notary public personally comes Frederick Saccucci, Webb's City who, being duly sworn, says that on the 6th day of December A.D. 1960, in the city aforesaid, one Jack Morrison, Jr. did unlawfully trespass upon private property, to wit:

Webb's City

contrary to Chapter 25, Section 60, Revised Ordinances of the City of St. Petersburg, 1955, in such case made and provided, and against the peace and dignity of the City of St. Petersburg, Florida.

S/ Frederick J. Saccucci

Sworn to and subscribed before me this 6th day of December, 1960

S/ W. G. Mullins (Seal)
St. Petersburg, Florida

Notary Public State of Florida at Large
My Commission Expires April 24, 1962

[fol. 106]

IN THE MUNICIPAL COURT, CITY OF ST. PETERSBURG

PINELLAS COUNTY, FLORIDA

CITY OF ST. PETERSBURG,
a Municipal Corporation
Plaintiff

vs.

JACK MORRISON, JR.
Defendant.

CERTIFICATE

I, W. G. Mullins, Clerk of Municipal Court, in the City of St. Petersburg, Florida, do hereby certify the foregoing and attached is a true and correct copy of the original affidavit, judgment and sentence pertaining to the case of Jack Morrison, Jr.

Dated at St. Petersburg, Florida, this 4th day of March A. D., 1961

/s/ W. G. MULLINS
W. G. Mullins

[fol. 107] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

Transcript of Testimony—March 8, 1961

Be It Remembered, that the above numbered and entitled cause came on for hearing this 8th day of March, A.D., 1961 before the Honorable Jack F. White, Judge of said Court, in Chambers, at the Courthouse, in the City of Clearwater, Pinellas County, Florida.

There were present at said time and place, among others, the attorneys below enumerated and the witnesses whose testimony appears herein.

APPEARANCES:

Sam Bucklew and George W. Phillips, of Bucklew, Ramsey and Phillips, 403 Morgan Building, Tampa 2, Florida, Attorneys for Plaintiff.

[fol. 108] Minnis and Williams, 624—22nd St. South, St. Petersburg, Florida, Attorneys for Defendants Ralph M. Wimbish and C. Bette Wimbish; Robert L. Carter, 20 West 40th Street, New York, N. Y., Attorney for Defendant NAACP; Frank H. White, 911—22nd Street South, St. Petersburg, Florida, Attorney for Defendants Ralph M. Wimbish and C. Bette Wimbish; Francisco A. Rodriguez, 703 Harrison Street, Tampa, Florida, Attorney for Defendant NAACP.

[fol. 109] COLLOQUY

The Court: At the beginning of the hearing on this day it was moved on behalf of the defendant that the cause be dismissed by reason of failure of an officer of the plaintiff corporation to appear for discovery deposition on the day certain, which was also the day at which discovery deposition was set to be taken on behalf of the plaintiff.

The Court considers and in exercising its discretion, feels that the said motion should and it is hereby denied.

The Court: Now you have a motion to dismiss and a motion to dissolve?

Mr. Williams: Counsel for the defendant waives any argument on motion to dissolve the temporary injunction.

The Court: Question of law are reserved and not waived.

Mr. Bucklew: Counsel for the plaintiff, in view of the sworn testimony on deposition of the defendant, Bette C. Wimbish, to the effect that she is, or was not at the time of the action complained of in this case, a member of the NAACP, nor did she in any way participate in the picketing or distribution of hand bills and the plaintiff accepting such sworn testimony in good faith and no counterclaim or cross complaint having been filed by the defendant Bette C. Wimbish, the Counsel for the plaintiff at this time moves the Court to dismiss her as a party defendant.

[fol. 110] J. E. WEBB being first duly sworn, testified in behalf of Plaintiff, as follows:

Direct examination.

By Mr. Bucklew:

Q. State your name, please.
A. J. E. Webb.
Q. And where do you live, sir?
A. St. Petersburg, 774 36th Avenue North.
Q. How long have you lived in St. Petersburg?
A. Soon be thirty-eight years.
Q. St. Petersburg, Florida?
A. That is right.
Q. And do you have—are you known more familiarly in St. Petersburg as "Doc Webb?"
A. That is right.
Q. For the purpose of the record, I will refer to you as "Doc", is that a nick-name or a title?
A. More or less.
Q. You are not—you do not have any degree in medicine or pharmacy?
A. No. In pharmacy, yes I am registered in Tennessee. More or less from practice than from books.
Q. You are a registered pharmacist in Tennessee?
[fol. 111] A. That is right.
Q. What is your occupation?
A. Merchant.
Q. And what particular organization or business are you connected with?
A. Webb City.
Q. And when was Webb City, if you know, started?
A. In '25.
Q. And who started it?
A. I had a partner and myself by the name of Johnson.
Q. You and your partner started Webb City in '25?
A. That is right.
Q. And is that a corporation or—?
A. It wasn't at that time. It is now.
Q. It is now Webb City, Incorporated?
A. Incorporated.

Q. What does Webb City consist of, drugs—what is the type of business or businesses in which it is engaged?

A. Well, we have I suppose ninety-eight percent of the necessities of life and some sixty-three different types of business.

Q. You were engaged primarily when Webb City first started in what particular type of business?

A. In a drug store.

[fol. 112] Q. You mean the usual things you find at a drug store plus prescriptions?

A. That is right.

Q. Where is Webb City presently located?

A. The main building?

Q. Yes.

A. 2nd Avenue South and 9th Street, on the corner of 2nd Avenue South and 9th Street.

Q. And how long have you been in that location?

A. These thirty-eight years.

Q. Since its inception, since its beginning?

A. That is right.

Q. How much does the main building, or approximately how much space in the terms of city blocks does the main building of Webb City, Incorporated occupy at the corner of 9th Street?

A. 2nd Avenue and 9th Street South.

Q. How much territory?

A. You mean the whole of Webb City?

Q. In the main building, not your boat department and that sort of thing.

A. The one building?

Q. Yes.

[fol. 113] A. About two hundred twenty by three hundred.

Q. And do you have additional space for parking facilities?

A. Eleven lots.

Q. Eleven parking lots?

A. Eleven different parking lots with the main building surrounded.

Q. How many employees does Webb City, Incorporated employ?

A. I would say at this time approximately between 117 and 118 at this time.

Q. Men and women?

A. Yes, men and women.

Q. Approximately how many colored employees do you have?

A. I would say one hundred fifty.

Q. Does that vary along with the number of your other employees as to the seasons of the year?

A. Yes.

Q. And how long, since the beginning of Webb City have you employed both colored and white help?

A. That is right.

Q. And as Webb City has grown they have increased, both your colored and your white help?

A. That is right and in salary.

[fol. 114] Q. And do you have some of your colored help that have been with you for some time?

A. We possibly have about twenty that has been with us longer than fifteen years.

Q. At the present time in the main building in Webb City on the corner of 9th Street and 2nd Avenue South, what is inside of that building?

A. Mainly the—we transport to the second, third and fourth floor with escalators and elevators as a department store; the main floor consists of a soda fountain and drug area, prescriptions, on the north side our super market.

Q. And that is all in that one building?

A. That is right, but belongs with the barber shop, etc.

Q. And in the basement, or sub-basement, I think you have to walk down the stairs?

A. Seats about four hundred capacity.

Q. Isn't it likewise a place for your employees to eat?

A. Yes.

Q. Both your white and colored employees?

A. That is right.

Q. Now, the main building you say consists of—

A. I would like to correct one thing. We are not satisfied with our eating places for either, but it is one of those things we have planned to take care of, the eating place for the entire store, as far as employees are concerned.

Q. There are four stories to Webb City, I mean the main building?

[fol. 115] A. Four stories above ground, the main building.

Q. Occupying that space that you have just testified about?

A. Yes.

Q. What is your position with Webb City, Incorporated?

A. I am the President.

Q. You are the President. And you—have you continuously been with Webb City in the building and growth of Webb City since its inception or beginning in 1925?

A. Night and day with exception of vacations.

Q. Do you recall the Friday—strike that. How many entrances are there to your main building. I mean by that, entrances for the people who come to trade with Webb City, how many entrances are there to the main building at 9th Street and 2nd Avenue South?

A. On the two streets?

Q. On both streets?

A. On both streets, six main—

Q. On 9th Street?

A. That is on 2nd Avenue South and on 9th Street.

Q. Now there are—do you know how many doors or entrances there are on 2nd Avenue South?

A. How many doors?

Q. No, entrances?

A. 2nd Avenue South?

[fol. 116] Q. Best of your recollection?

A. Four.

Q. And two on 9th Street?

A. That is right.

Q. Now, were you the President and in charge of Webb City, Incorporated in December of 1960 last year?

A. Yes.

Q. Do you recall an incident which began on Friday, December 2, 1960, when certain picketing was commenced against Webb City?

A. I was present.

Q. What time of day did that start?

A. Well, I wasn't present when it started; I don't know exactly. I wasn't there when it started. I was there by two o'clock.

Q. What time does your store open?

A. Store opens at seven o'clock; I think it started about ten. I am not positive.

Mr. Carter: Move to strike the answer.
The Court: Motion granted.

By Mr. Bucklew:

Q. You don't know of your own knowledge what time the picketing started?
A. No, I don't.
Q. When you arrived was picketing in force at that time?
A. Yes.
Q. Your Honor, may I remove the pictures and exhibits which were attached to the complaint in the original file? May I remove them and identify them for introduction in evidence?

[fol. 117] The Court: Yes.

A. I am really uncertain about that.

Statement by Mr. Bucklew:

That is all right, I will prove that later.

Q. When you arrived there on the afternoon of Friday, December 2nd, did you observe the picketing, where did you observe the picketing of Webb City?
A. First of all I want to tell the Court that I don't remember times; I know of the Friday; I know they were there and I don't know what time it started.

The Court: Just make the answer responsive to the question. The question was what you observed when you did arrive.

A. The Court please, can I ramble a little bit on this?

The Court: Based on your personal observation.

A. Then I would like—

Mr. Carter: Before you proceed, may I inquire are there notes that you have in your hand which you are reading from?

A. They are notes that I took that I thought might be asked.

The Court: Are you testifying from the notes? Were they made at the time that you observed the things about which you are to testify?

A. No, they were made earlier this morning.

The Court: You can't testify from notes that were not made concurrently with the time that you purport to testify about.

A. I had notes made and I just wrote them up on a card. I will be glad to let them examine—

[fol. 118] Mr. Bucklew: Put them in your pocket.

By Mr. Bucklew:

Q. When you arrived at Webb City on Friday afternoon what did you observe in the way of picketing of Webb City?

Mr. Carter: Your Honor, counsel has been leading the witness.

The Court: Objection sustained.

By Mr. Bucklew:

Q. When you arrived at Webb City on Friday afternoon, December 2, 1960, what did you see, if anything, relative to the condition surrounding your store, Webb City?

Mr. Minnis: Object.

The Court: Objection overruled.

A. I saw a couple of groups of men; I would say there were in the two groups possibly, anywhere from seven to ten in the two groups. They were marching with banners through the store.

By Mr. Bucklew:

Q. Inside the store?

A. Inside the store. Up to that time, during the day, I certainly had no intentions other than just not doing anything about it, just see what was going to happen, but these men were forcing their way with banners through various crowded areas of the store. They were not only blockading,

but interfering with the retail trade. Nothing like this had ever happened at Webb City. Our clerks and customers have never seen anything like it. It created—the atmosphere—seemed to me that the law and order had taken a vacation. I have nothing against any group of men—I have the best customers, race, creed, we give them all the same [fol. 119] friendly service. But this thing—seemed to me that the clerks were excited and more or less terrified. A lot of the elderly people immediately left the store. I went outside and there were I don't know how many; I know that there must have been six—must have been twelve on the two sides. They were more or less blockading and interfering and they were telling many fine colored customers that you can't go in there.

Q. Did you hear that?

A. Yes, sir, I heard. They didn't keep the colored person from entering, but they would get in front of them and raise the banner in front of them. I heard on two occasions, "you can't go in there."

Q. You refer to banners?

A. Picketing banners.

Q. Were they cloth or cardboard?

A. Cardboard, I think, on sticks. I do know it created havoc, fear and fear of violence. And from them on the next four days we suffered greatly in sales and customers.

Q. In that connection, you say you went outside after you saw what you just described inside, when you went outside which side, or streets of the store did you go on?

A. They were picketing both sides, 2nd Avenue, that is our main entrance.

Q. They were picketing both sides?

A. 2nd Avenue South and 9th Street South.

Q. And were the pickets, or the picketing that you have just testified about, was that accompanied—did all of them, [fol. 120] or the ones that you saw, did they, each one have this banner that you referred to?

A. Each one of these men had a banner.

Q. I will hand you here a picture which is marked for identification; I will ask you to look at the picture, Doc, and testify whether or not that is a fair representation of that occasion?

A. (witness does not answer).

Q. I will ask you to look at that picture, Doc, and ask you to testify if you can what that shows?

A. Well, as far as I can tell it shows undue excitement.

Mr. Carter: Object, move that be stricken.

The Court: Objection sustained.

Q. Let me ask you this, Doc, can you determine which side of the street this is?

A. This is the 9th Street side.

Q. When you went outside of your store on Friday afternoon, could you testify as to whether or not the condition which existed outside of your store on Friday afternoon appeared in any manner, or appeared the same as this picture shows?

A. That is right.

Mr. Bucklew: Like to have this marked for identification. I will have the person who took it testify later.

(Whereupon said photograph was marked as Plaintiff's Exhibit No. 1).

Q. Now, Doc, I will ask you to examine this picture and testify, if you can, whether that is your store and if so what [fol. 121] side or what street is that?

A. This is 9th Street side.

Q. That is another picture of 9th Street?

A. That is right; that is the main entrance on 9th Street.

Q. I will ask you whether or not that picture fairly reflects the condition that existed at the time you have testified you went outside of your store on this Friday afternoon?

A. That is right.

Mr. Carter: I am going to make a general objection to the introduction and identification at this time. If the plaintiff has a photographer who took the pictures at the time and was there and present, he is the person to identify these pictures and what they represent.

The Court: Counsel made the statement that he would have a photographer come in. I think it is within the dis-

cretion of the Court—not received into evidence until then. Objection overruled.

Mr. Carter: Exception.

By Mr. Bucklew:

Q. I will ask you to look at that picture, Doc, and ask you to state, if you can, whether or not that is any portion of your store and if so which side?

A. That is 2nd Avenue South.

Q. 2nd Avenue South?

A. That is right.

Q. What effect—strike that. How long did this picketing, Doc, of Webb City, Incorporated continue in force and effect, how long did it keep on?

A. The most of it and I think maybe Friday, Saturday, [fol. 122] Monday and Tuesday, the four days was the major part of it.

Q. And as it continued, were you able—strike that please. After it had continued for this period of time did you take any action to endeavor to stop this picketing and if so, state what that was?

A. Webb City has about six hundred bond and stockholders and we talked to various stockholders.

Q. Don't say about any conversation, do not relate any.

A. I decided that we would have to have some action, otherwise going to jeopardize business, investors, loss of man hours; we had to do something fast. If we couldn't get some legal status, the entire Webb City would be in jeopardy, both our customers and clerks. Our customers were telling me by the hundreds—

Q. Wait a minute.

A. I will say that from what I saw and heard they were keeping out of our store; that's the way it seemed to me. They weren't there and our sales were off.

Q. Did your figures—strike that. Did you keep a daily run sheet of your gross sales each day?

A. That is right.

Q. Let's say Friday and Saturday, did your figures on Friday and Saturday during the time this picketing was in force and effect, these specific days, 2nd and 3rd, did that

reflect any difference between the previous Friday and Saturday when there was none.

A. It fell off greatly.

[fol. 123] Q. And will the figures so reveal?

A. That is right.

Q. And you have the Treasurer of your Company here?

A. We have our Treasurer and Auditor here, Mr. Robert Johnson.

Q. And he has those official figures?

A. He does.

Q. Don't answer this if you don't want to, do you know of your own knowledge the amount of loss in business which occurred on Friday and Saturday while this picketing was going on as compared to the previous Friday and Saturday when it was not?

A. I would rather him answer that.

Q. Now, you said you did take some action, what action did you take, Doc, in order to protect Webb City?

A. I engaged—

Mr. Carter: Object to the question. He can ask what action he took.

The Court: Objection overruled.

By Mr. Bucklew:

Q. What action, if any, did you take?

A. I secured your services.

Q. In other words you sought the services of an Attorney?

A. That is right.

Q. And did you thereafter, Doc, file a complaint setting forth the matters which you have just been testifying about and ask the Court for an injunction to enjoin.

Mr. Carter: Object. Counsel is testifying.

The Court: Objection sustained.

[fol. 124] Q. After, well did you obtain an injunction, Doc?

A. That is right.

Q. At the time this picketing took place in Webb City which you have testified about, both inside and outside the store, I will ask you whether or not during that period of

time there was any labor dispute with any organized body of labor?

A. No.

Q. Doc, did you personally observe, if you didn't personally observe just say so, did you personally observe any instances either outside or inside of your store of any jostling or interference, I would say bodily interference with customers?

A. Personally no.

The Court: I would like to ask a question, did you personally know or recognize any of the ones that you saw in or out of the store that you testified about?

A. The pickets?

The Court: Yes.

(answer continued) All strangers as far as I am concerned. The pickets themselves to me, the banners, as far as I know strangers. I know a tremendous amount of people in town. They were strangers to me.

Cross examination.

By Mr. Minnis:

Q. I believe it is Doc Webb, is that right?

A. That is right.

Q. Now, Doc Webb, how are you able to say that you knew that all of these people were strangers to you, what [fol. 125] is the basis of your conclusion?

A. I have been in that City here, soon be thirty-eight years and I know a lot of people. I know a lot of colored people and a lot of white people. My customers.

Q. It is your testimony then that you know all of the colored people in St. Petersburg?

A. Oh, no, but lots of them.

Q. Is it your testimony that you know them all?

A. No, no.

Q. Now, I believe you testified that there were some persons in your store, when was these persons in your store with banners?

A. Well, the time, I don't want to call the time. I know during the afternoon after I arrived about the first thing I saw was the group of men passing through the store interfering and blockading retail business and forcing their way through places where there was a crowd with the banners. Sometimes the banners would be lowered and people would duck; sometimes one of the pickets wouldn't hold it up and it would be this way, somebody get clipped.

Q. How long was it this thing went on in your store?

A. Inside the store? I immediately called the officers. I would say about, maybe fifteen or twenty minutes.

Q. And you connected these persons, how did you connect these persons carrying whatever banners they were carrying with the persons outside, how did you connect them with the persons outside?

A. I don't quite get—they were all pickets as far as I was [fol. 126] concerned, outside and inside.

Q. And just where were these persons with these banners?

A. Both outside and inside.

Q. I am talking about inside, what part of the store?

A. In the market and in the drug area and in the main area. I don't know where else they were, but I ran to the market and I saw them in the arcade and I saw them in the main drug area.

Q. Now you—you were present all the other days while the picketing was in progress?

A. That is right.

Q. Did you ever see anybody else in your store like you did on this one instance for fifteen minutes?

A. You mean after Friday?

Q. Or anytime?

A. Friday is the only day. That is the first day. That is the only day I saw them in the store because the officers got them out. Then the police was then stationed at the store and they weren't allowed there; on several occasions they did come to the back door.

Q. Did you see them?

A. I did not see them.

Q. And then you can't testify to that?

A. No, sir.

By Mr. Carter:

Q. You have identified these pictures that were taken on the outside of the store?

[fol. 127] A. That is right.

Q. Were any pictures taken of these instances inside the store?

A. I wasn't prepared for it.

Q. I asked you, was any pictures taken?

A. Not that I know of.

Q. Am I correct in your testimony you indicated that the picketing inside the store was stopped because you called the police?

A. That is right and my officers. The officers asked them to get out.

Q. This is not the city police?

A. No, we had both the city and ours. When I speak of officers I mean executives of the store, they said they would have to leave.

Q. Asked the people to leave?

A. That is right.

Q. And they left?

A. That is right.

Q. Now, you don't remember the time that you arrived at the store, as I recall?

A. I think it must have been—I am not positive. I know it was between two and three.

Q. And you observed this going on in the store at that hour?

A. I don't remember exactly the time, but I did see them.

Q. Did you see them as soon as you got to the store?

A. Yes, in the early part of the afternoon. I would like to clear up, that I do not know definitely the time that I came to the store.

The Court: That is all right.

[fol. 128] Mr. Carter: I am through.

Redirect examination.

By Mr. Bucklew:

Q. Doc, counsel for the National Association of Advancement for Colored People just asked you whether or not these pickets inside the store left when the officers requested them to, now I ask you, did those pickets inside the store leave before or after the police officers arrived, if you know?

A. They left after the—our officers of the store went on the floor, they left after they said, "you must leave the building." They left and I know that we had the police officers there stationed and they left after they were told. I am not positive that the police told them, but I am positive our officers of the store told them.

Q. Then you are not sure one way or the other as to whether they left before the police arrived or after the police arrived?

A. I think we had police stationed there and our officers on the floor.

Q. And another thing, the manner in which you testified they were wielding those banners, outside of that particular manner you saw, or did you see anything of a violent nature other than that?

A. You mean?

Q. I understand from your testimony that they would lower the banners sometimes in the store?

A. I don't say they did it intentionally, but they would just (indicating).

[fol. 129] Q. Did you see any violence of any kind other than that?

A. No.

Recross examination.

By Mr. Carter:

Q. Did you see any violence of any kind in or outside the store?

A. I did not. I am in an office, mezzanine office, unless I go down on the floor.

Q. During the time you observed on Friday or thereafter, did you see personally see any violence of any kind in connection with the picketing?

A. No.

CHARLES M. PERRY being first duly sworn, testified on behalf of the Plaintiff, as follows:

Direct examination.

By Mr. Bucklew:

Q. State your name, please.

A. Charles M. Perry.

Q. Where do you live?

A. St. Petersburg, Florida.

Q. What is your business or profession?

A. Assistant manager of photography department, Webb City, Inc.

Q. Were you engaged in such business in December of 1960?

A. Yes, sir.

Q. Mr. Perry, in addition to being assistant in charge, or in charge of the photography department, are you also a photographer who takes pictures?

A. Yes, sir.

[fol. 130] Q. Where are those pictures; I will ask you Mr. Perry, whether or not you took some pictures of the picketing which occurred at Webb City, or which occurred at Webb City between December 2nd and December 6th?

A. Yes.

Q. I will ask you to look at this picture marked for identification as Plaintiff's Exhibit No. 1, and state if you can what that is, sir?

A. That is a picture I took of some of the picketing activities in front of Webb City.

Q. When did you take that picture?

A. On Monday, I think. I am pretty sure on December 5th.

Q. Was it morning or afternoon to the best of your recollection?

A. Noon, or shortly thereafter, along in the afternoon.

Q. And did you personally take that picture (indicating)?

A. Yes, sir.

Q. Were you there in the store, or in and out of the store during the entire time that this picketing was going on December 2nd to December 6?

A. Yes, sir.

Q. Does that picture fairly reflect the conditions existing outside Webb City at that time?

A. Perfectly during all those days.

Mr. Bucklew: At this time we offer a photograph which has been identified as Plaintiff's Exhibit No. 1 in evidence.

The Court: Any objection?

[fol. 131] Mr. Minnis: None.

The Court: Proceed.

By Mr. Bucklew:

Q. I will ask you to look at Plaintiff's Exhibit No. 2 and tell what it is that purports to show?

A. That is in front of Webb City.

Q. On which street?

A. Ninth.

Q. And did you take that picture?

A. No, sir.

Q. Do you know who did?

A. No, sir.

Q. Do you know whether it was taken by a Times photographer or not?

A. I haven't the slightest idea.

Q. I will ask you to look at this picture and ask whether or not you took that picture?

A. Yes.

Q. And where is that Mr. Perry?

A. That is on the side, around on the street, second avenue.

Q. Mr. Perry, so far as the time element, did you take all of these pictures on the same day and during the more or less course of the same time, to-wit: somewhere between twelve and one o'clock?

A. I spent most of the day in and out of the store taking pictures.

Q. Monday the 5th?

A. Yes, sir.

[fol. 132] Q. These pictures which you identified were taken during that time?

A. On Monday.

Q. Were these pictures—whether or not these pictures reflect the condition which existed during this period of time while this picketing was going on?

A. That is correct.

Q. Now, will you examine these pictures—wait a minute—I offer this in evidence as Plaintiff's Exhibit No. 2; I believe that was the picture you just identified?

A. Yes.

Mr. Carter: No objection.

The Court: Received. Let both be marked.

(Thereupon Plaintiff's Exhibits No. 1 and No. 2, being photographs, are admitted in evidence.)

By Mr. Bucklew:

Q. In order to expedite, matters of time and place has been established, I am going to, at this time, hand Mr. Perry a series of pictures to identify, which pictures you personally took at the aforesaid time; will you examine those pictures, Mr. Perry, and state, if you can, which pictures you took and lay them aside, sir?

A. These are the ones that I took.

Q. At the time and place which you have already testified to?

A. Yes, sir.

[fol. 133] Q. So far as you can identify or recall, those pictures, you did not take them yourself?

A. No.

Mr. Bucklew: I will offer these. Plaintiff now offers these in evidence as Plaintiff's Exhibits 3, 4, 5, 6 and 7. It makes no difference which order they are in.

(Thereupon Plaintiff's Exhibits numbered 3, 4, 5, 6 and 7, being photographs, are received in evidence.)

By Mr. Bucklew:

Q. Mr. Perry I will ask you, do you know who took these pictures?

A. I am not sure.

Q. Would you identify these?

A. Yes, sir, I did see some press photographers there and I don't know who took those.

Q. I will ask you at this time whether or not—were you in and out of the store during the entire time this picketing was going on between December 2nd and—

A. Yes, I had shot two or three rolls of films, go back in and get fresh supply and come back out.

Q. I will ask you whether or not this picture here which you say you personally did not take, do you know what that picture is?

Mr. Carter: Object.

The Court: If you are laying a predicate without using the photographer who took it I would have to sustain the objection.

[fol. 134] Mr. Bucklew: All right.

Mr. Minnis: No questions.

R. E. Johnson, being first duly sworn, testified on behalf of the Plaintiff, as follows:

Direct examination.

By Mr. Bucklew:

Q. State your name, please.

A. R. E. Johnson.

Q. Where do you live?

A. Tampa.

Q. What is your business or occupation?

A. Secretary-Treasurer of Webb City.

Q. And how long have you occupied that position?

A. I have occupied that specific position for two weeks.

Q. And prior to that?

A. I was Comptroller.

Q. Of Webb City?

A. Yes.

Q. And where do you work in St. Petersburg, or Tampa?
A. In St. Petersburg.
Q. In the main store?
A. In the main office.
Q. Where?
A. Across the street from the main store.
Q. On what street?
[fol. 135] A. On 9th Street in St. Petersburg.
Q. Now, in the capacity that you occupy, or did occupy both before being Treasurer and as comptroller, I will ask you to state whether or not Webb City or whether you know whether Webb City, Incorporated runs a daily tabulation on its gross receipts for each day?
A. Yes, it does every day.
Q. Do you have anything to do with compiling those?
A. Yes, I am responsible for that.
Q. Were you so responsible in December of 1960?
A. Yes, sir.
Q. Mr. Johnson, what, if any, other records are kept relative to the previous day on the previous year, do you keep those too?
A. Yes, sir.
Q. Is that kept on one sheet or on separate sheets?
A. Comparable days are on the same sheet each day.
Q. Is that for the preceding year?
A. Yes.
Q. You don't carry that two or three years back?
A. One year.
Q. So that your record for your gross receipts today, as I understand it, are reflected on this sheet for similar—on that same sheet you will show the amount of business Webb City did on the preceding year, is that correct?
A. Same day of the preceding year.
[fol. 136] Q. Now, Mr. Johnson, do you have with you the records showing the gross receipts for Webb City, Incorporated, Plaintiff in this case, on December 2, 1960?
A. Yes, I do.
Q. Do you likewise have a thermofax copy of that original sheet?
A. Original and thermofax copies of that.
Q. Will you refer to the copy that you have and see if it does reflect—and testify whether or not it does reflect

what the gross receipts was for Webb City on Friday, December 2, 1960?

A. Yes, it does.

Q. What else does that sheet reflect?

A. The sales for the comparable day the year before.

Q. Now, do you have a record also as to the gross receipts which you had on the preceding Friday?

A. Yes, sir.

Q. Does that show on the same sheet?

A. Different sheet.

Q. Now on this particular—let me have this—is this the sheet that shows—

A. December 2nd.

Q. Of 1960?

A. Correct.

Q. And likewise the receipts for the same preceding year, same Day, 1959?

A. Correct, you have the 2nd and 3rd.

[fol. 137] Q. This is Friday and Saturday, sir?

A. Let me separate it, it is the second only.

Q. This is just—

A. Friday, December 2, the front page, the bottom figure.

By Mr. Bucklew:

Q. I would like to offer this in evidence with permission to substitute the thermofax copy.

Mr. Carter: Suggest—wouldn't it be just as easy for Mr. Johnson to tell what the figures are?

By Mr. Bucklew:

Q. Oh, yes. Will you look at that record, Mr. Johnson, and testify what the gross receipts of Webb City, Incorporated on Friday, December 2, 1960, were?

A. Gross receipts were $105,923.00.

Q. And does that sheet also reflect the gross receipts for the same day the preceding year 1959?

A. Yes.

Q. And what were the gross receipts on Friday of 1959, comparable Friday?

A. $117,583.00.

Q. Can you give us in round figures then the loss in gross receipts for Friday of 1960 as compared with 1959?

A. The loss $11,660.00.

Q. Do you likewise have—now will you examine—do you have likewise a record showing the receipts for the preceding Friday 1960?

A. Yes, I do.

Q. And that would be November 26, wouldn't it?

[fol. 138] A. Yes, November 26.

Q. Is that Friday?

A. No, November 25th would be the preceding Friday.

Q. Look at November 25, 1960, which was the preceding Friday, the gross receipts of Webb City, Incorporated, for the preceding Friday, November 25, 1960, were what, sir?

A. $114,985.00.

Q. Now, what was the loss in revenue between the preceding Friday and the Friday on which this picketing began December 2nd?

A. That would be in round figures, $9,000.00.

Q. Now, will you look at the records, sir, for Saturday, December 3, 1960, and state what your record reflects the gross income of Webb City was for that day?

A. You want a thermofax copy of that first?

Mr. Bucklew: Yes.

(answer continued) The gross sales, this is Saturday, December 3, 1960, gross sales were $107,218.00.

By Mr. Bucklew:

Q. What were the gross sales for the comparable Saturday in 1959?

A. $120,364.00.

Q. What was the loss, the difference in revenue between the Saturday of December 3, while this picketing was in force, and the gross receipts for the Saturday of the preceding year?

A. $13,146.00.

Q. You mean a loss of that much?

[fol. 139] A. It was a loss.

Q. Now, look at the sheet which was the Saturday preceding, December 3; that would be November 26, 1960, do you have that, sir?

A. Yes, I do. Do you want the thermofax first?

Q. Yes, please. Now what was the gross receipts for Saturday, November 26, 1960, for Webb City?

A. $118,319.00.

Q. And what is the difference in the income, or the gross receipts rather, of Webb City on November 26, 1960 and December 3, 1960, while the picketing was in force?

A. A drop of approximately $11,000.00.

By Mr. Bucklew:

Q. Your witness.

Cross examination.

By Mr. Carter:

Q. I am looking now at this comparison starting November 26, 1960, would you look at that please?

A. Is that one $118,319.00?

Q. Yes. Am I correct, that November 26, 1960, you had gross receipts of $118,319.00?

A. Correct.

Q. And the prior year, same day, you had gross receipts of $121,742.00?

A. Correct.

Q. So that on November 26, as compared with the report of 1960, as compared with November 26, 1959, you had a loss of something like $3,423.00?

A. That is correct.

Mr. Carter: That is all.

[fol. 140] Redirect examination.

By Mr. Bucklew:

Q. Mr. Johnson, counsel has asked you whether or not there was a drop in revenue on November 26, 1960, compared to November 26, 1959; can you state whether or not the business of Webb City for the year 1960, say the past six months is less or more than the preceding year?

The Court: Answer "yes," or "no."

A. No, I cannot so state.

Q. You can't state whether or not the business is more or the business is less?

A. I can state more recent figures, but not the year.

Q. I will ask you by—what more recent figures, what period of time?

A. I handle lots of figures. It is very difficult to spiel off figures. I know something about their current figures.

Q. About your current figures?

A. The current month, for example the month of March.

Q. Of March 1961?

A. Yes.

Q. As compared with March 1960?

A. Yes, sir.

Q. Can you state whether the business of Webb City for this period of time, period of March 1961, is more or less than it was in March 1960?

Mr. Carter: Object, immaterial.

The Court: Objection noted.

Mr. Bucklew: It's regarding depression, whether or not [fol. 141] the business of Webb City now is more or less than it was a year ago.

The Court: Objection sustained. Too remote.

By Mr. Bucklew:

Q. Can you give me any figures for the periods of December of 1960—withdraw that because that was while the picketing was in force. Can you give me any testimony as to the receipts in February of 1961, as compared to February of 1960?

Mr. Carter: Same objection.

The Court: Think the point is well taken.

Mr. Bucklew: That is all.

CHARLES W. GIKE, being first duly sworn, testified on behalf of the Plaintiff as follows:

Direct examination.

By Mr. Bucklew:

Q. State your name, please?
A. Charles W. Gike.
Q. Where do you live Mr. Gike?
A. In St. Petersburg, Florida.
Q. How long have you lived there, sir?
A. Nine years last January.
Q. What is your business or occupation?
A. Supervisor at Webb City.
Q. Mr. Gike, what do your duties—general duties—in what capacity?
A. General supervision of the operation on the main floor in and outside the store.
[fol. 142] Q. (Copy illegible)
A. I did.
Q. At Webb City?
A. I did.
Q. And were you present performing your duties during the time this picketing took place there at Webb City?
A. Yes.
Q. Where did you observe this, sir, observe this picketing?
A. I observed it out on the north, on 9th street and also on 2nd Avenue South there, and for a time there was some of it inside the store.
Q. Now, was that on the first day or at a later time?
A. I don't recall the date.
Q. Now, do you recall any incident—strike that. Did you have any incident during the course of this picketing either inside or outside the store where any of the entrances to Webb City, Incorporated was being obstructed by any of the pickets?
A. Yes.

Mr. Minnis: Object.
The Court: Question is leading in form.

By Mr. Bucklew:

Q. Mr. Gike, will you please state what you heard either inside or outside of the store so far as picketing was concerned and so far as pertained to any of the entrances or [fol. 143] exits to Webb City?

A. Well the most picketing was on the outside, but for a time, and I don't recall the day, a few of the pickets got inside the store and were carrying the placards around inside the store; and outside in one instance by the grocery entrance on 9th street, there was a picket with a sign—as you go in—there's an automatic door—and he would carry the sign in front of him and when someone went in the store he put it to one side, put it in their way.

Q. In whose way?

A. In the person coming into the store.

Q. At a door or entrance?

A. That is right.

Q. I will ask you to look at this Plaintiff's Exhibit No. 5 and state whether you recognize anybody in that picture there?

A. Yes, this is the party here I was speaking of in reference of holding the sign in front of them and then dropping it like that when someone was going into the store.

Q. Would you make an "x" above the person whom you have identified there and just put your initials on that picture, please, sir?

(question continued) Do you know how long this went on, sir?

A. Frankly I don't, but it was long enough time that I made a round inside of the main floor, through the arcade; long enough that I went into the arcade by the ground [fol. 144] entrance, through the gift department and out through the cigarette store entrance on the corner and back again and it was still going on.

Q. By what person or persons?

A. The one I checked.

Q. And what did you do after that, sir?

A. I went in and notified my division manager, Mr. Holly, and security was called, Mr. Secutchie and he in turn called the police.

Q. Do you recall what day that was, sir?

A. I am not certain of the date. I know it was Monday; I believe it was the 6th if I remember the calendar right. I know it was Monday for sure.

Mr. Bucklew: Your witness.

Cross examination.

By Mr. Minnis:

Q. Mr. Gike, I believe you are Mr. Gikes?

A. That is correct.

Q. Mr. Gike, how many instances that you personally observed like the one you just described involving this individual that you just marked with an "x"?

A. Three specific ones.

Q. Was it involving the same individual?

A. Correct.

Q. The same individual?

A. Correct.

Q. Now, do you know whether this individual actually [fol. 145] had anything to do with the pickets outside or not?

A. I judged by him holding the placard in his hand that stated the picketing message.

Q. That is the only thing; do you know whether it was like the other signs or not?

A. It was like the others, that is correct.

Mr. Minnis: No further questions.

Fred John Secutchie, being first duly sworn, testified on behalf of the Plaintiff, as follows:

Direct examination.

By Mr. Bucklew:

Q. State your name please.

A. Fred John Secutchie.

Q. Where do you live?

A. St. Petersburg.

Q. And how long have you lived there, sir?
A. Ten years.
Q. And by whom are you employed?
A. Webb City.
Q. How long have you been so employed?
A. Five years.
Q. And in what capacity do you serve?
A. I am the chief security officer and bonded deputy sheriff.
Q. Mr. Secutchie, were you the chief security officer and bonded deputy sheriff in December 1960?
[fol. 146] A. Yes, sir.
Q. And were you present at Webb City, Incorporated, when this picketing took place, for the period it did take place?
A. Yes, sir.
Q. Mr. Secutchie, did you observe the picketing going on there at Webb City?
A. Yes.
Q. And where was it taking place?
A. It was taking place on the 9th street side and also on the South side of the place.
Q. Did you observe any instance, Mr. Secutchie, of any person or persons carrying banners—strike that. Will you state, Mr. Secutchie, whether you observed—what you observed in the way of picketing with reference to any of the entrances to Webb City?
A. The west entrance of our grocery department was being picketed by two colored boys. They were both carrying banners and one of them had his foot on the mat—
Q. What mat was that?
A. That is the mat that opens the door, the automatic door—and he—so he was blocking our entrance and I called the police.
Q. Was that the entrance to Webb City?
A. Webb City grocery department.
Q. And who placed that mat there?
A. That is a permanent mat that works with the fixture.
Q. When you say it opens the door you step on it and it automatically trips the door, is that correct?
[fol. 147] A. Correct.

Q. I hand you plaintiff's exhibit No. 5, Mr. Secutchie, and ask if you recognize any person or persons in that picture there?

A. I recognize both pickets, the one on the left is the one I signed an affidavit against in City Court.

Q. Is that the one with the check mark drawn over his head?

A. That is correct.

Q. Was he the one that was using that placard?

A. Yes, he was.

Q. You just testified about?

A. Yes, sir.

Q. Where did he have that on the mat when you testified that you saw it there on a mat, where was this placard?

A. He was standing on the mat and had the placard down as he has it here in the picture across the door and there was colored people trying to get into the store and that is the reason I called the city detectives.

Q. Did the city detectives respond?

A. They did, immediately.

Q. Do you know who those detectives were?

A. Sgt. Detriech and Lt. Holly.

Q. Did you later go to the police station?

A. I did.

Q. Did you sign an affidavit, swear out a warrant for this man?

A. I signed the affidavit and appeared at Court against him.

Q. Mr. Secutchie, I hand you herewith a paper purporting to show a case record and certificate from W. G. Mullins, [fol. 148] Clerk of the Municipal Court, would you look at that please, sir, and state if you can what it is, can you state what that is?

A. Yes, sir.

Q. Now don't answer the question until counsel for the defendants have had an opportunity to speak, you can say what that certificate is—let me ask one further question, will you look at the reverse side of that and see if there is a certificate on there from the Clerk of the Municipal Court, is there such certificate on there and from whom did you obtain that certificate?

A. The Clerk of the City Court.

Q. Where did you get that paper, did you procure that paper that is in your hands?

A. Yes, sir, from the Clerk's office.

Q. When did you do that?

A. Approximately three days ago.

Q. Don't answer this question until counsel has had an opportunity to speak if they want to. What is this, what does this certified copy of this case record purport to show, sir?

Mr. Carter: Object. I don't think he is qualified to testify about that at all. I think he needs the Court Clerk. It's agreeable for Mr. Saccucci to testify that he signed an affidavit or complaint against the particular person, the particular person identified. He said that.

By Mr. Bucklew:

Q. From who did you obtain this?

A. Mr. Mullins, Clerk of the City Court.

Q. Did you personally obtain that from him?

A. Yes.

[fol. 149] Mr. Bucklew: We offer this in evidence.

The Court: What is your objection to this?

Mr. Carter: Hasn't been validly identified and authenticated.

The Court: Are you objecting to this instrument?

Mr. Carter: I don't think that is a proper document without having the Clerk here.

By Mr. Bucklew:

Q. Alright, let me ask—pursuant to swearing out this warrant for this man, do you recall what his name was?

A. Jack Doyle Morrison.

Q. Did you at anytime subsequent to taking out this warrant, and subsequent to this arrest, did you at any time appear in City Court?

A. I have appeared in City Courts over two hundred—

Q. I mean against this man?

A. No, sir.

Q. You did not appear in that?

A. No, sir.

Q. Do you know whether he was tried in the City Court?

A. Oh, yes I appeared against him at that time.

Q. On this particular occasion pursuant to the charge you swore out against him?

A. Yes, sir; I appeared in Court, he plead guilty to the charge.

Q. Were you present when the Court sentenced him, sir?

A. I was.

Q. I will ask you to examine this copy—I will ask you this, Mr. Saccucci, you say you were present when he plead guilt, ?

[fol. 150] A. Yes, I was.

Q. And when the Court sentenced him?

A. I was.

Q. Did you hear the sentence of the Court?

A. Yes.

Q. And what was the sentence of the Court?

A. Ten days.

Q. I will ask you to examine this instrument here which purports to be a certified copy of the disposition of this case and I will ask you if you will state where that came from, if you know?

A. That came from the Clerk's office.

Q. And who obtained it?

A. I obtained it, sir.

Mr. Bucklew: I am offering this in evidence.

Mr. Carter: Objection.

The Court: Overruled.

(Thereupon Plaintiff's Exhibit No. 8 was received in evidence.)

By Mr. Bucklew:

Q. Mr. Saccucci, can you testify as to whether or not the man which you identified in Plaintiff's Exhibit No. 5, would you look at Plaintiff's Exhibit No. 5 and state who the man is there that you have identified, if you know?

A. Jack Doyle Morrison.

Q. Is that the same man whom you preferred charges against?

A. Yes.

Q. Is that the same man who appeared in Municipal [fol. 151] Court and plead guilty and was sentenced?

A. Yes, sir.

Mr. Bucklew: Your witness.

Cross examination.

By Mr. Carter:

Q. You were present during the entire period on Friday when these incidents occurred?

A. This particular incident?

Mr. Carter: Yes.

(answer continued) Yes, sir.

By Mr. Carter:

Q. In this particular instance did you see all the details of the picketing, etc ?

A. Yes, I was there all day each day.

Q. Were you there when it began?

A. Yes, I was.

Q. Are you—did you observe any other incidents which caused you to call the City Police?

A. Yes, I have been approached by several colored people that said they were afraid.

The Court: Make the answer responsive to that question, was there any other incidents that caused you to call the police?

A. The incident particularly is the one—that's where he was trespassing.

By Mr. Carter:

Q. Make your answer responsive, my question was, did you see any other incident that caused you to call the city police?

A. I can't answer that at present.

[fol. 152] Q. You can't answer that?

A. (witness does not answer.)

Q. Do I understand that you can't answer it?

A. I will not answer it, that's the—

Q. I want an answer to the question?

A. Well I am trying—

Q. Did you call the police on any other occasion?

A. No, I did not.

Q. Now, you described some mat in connection with this man Morrison, where is this mat located?

A. The mat is located immediately in front of the door, the entrance to the store.

Q. Is it on the premises?

A. It is private property.

Q. Not on the sidewalk?

A. No, it is private property, you would not be able to get in the store without stepping on the mat.

Q. On your property, off the sidewalk?

A. I would say it is on our property, yes, it is part of the door.

Q. Does it "jut" outside the door?

A. Outside and in, both.

Q. One of those things, you step on it and the door automatically opens?

A. Yes, sir.

Redirect examination.

By Mr. Bucklew:

Q. I will ask you to examine Plaintiff's Exhibit No. 7 [fol. 153] and state whether or not you are familiar with that scene there?

Mr. Minnis: Object.

Mr. Bucklew: This is about the mat.

A. I am familiar.

Q. Now is that—I will ask you to look at Plaintiff's Exhibit No. 7 and ask you whether or not that shows the mat you testified about, which counsel asked you about on cross examination?

A. That is the mat.

Q. Will you put an "x" by that mat and your initials, sir; and is that the mat there by which you have placed an "x", is that the one you have referred to in your testimony here?
A. Yes, it is.

Mr. Bucklew: No further questions.

JOHN G. HEALEY, being first duly sworn, testified on behalf of the Plaintiff, as follows:

Direct examination.

By Mr. Bucklew:

Q. State your name please, sir.
A. John G. Healey.
Q. Where do you live?
A. 684—52nd Avenue South, St. Petersburg.
Q. How long have you lived in St. Petersburg?
A. Since 1923.
Q. What is your business or occupation?
A. Lieutenant with St. Petersburg Police Department.
[fol. 154] Q. Do you recall an incident on the 6th day of December 1960, at Webb City in St. Petersburg, Webb City store there at St. Petersburg, did you go to the scene there at that time on the 6th of December?
A. Yes.
Q. Was this in response to a call?
A. It was.
Q. What did you observe, Lieutenant, at the time that you arrived at the scene?
A. At the 9th Street doorway to the grocery department at Webb City I observed two colored men. At the time I arrived they were not blocking the doorway, however, they were back in off the sidewalk area. The two were there, they had signs which they were not displaying however, they just had the signs down standing at the grocery there and Mr. Saccucci came out to me and talked with me regarding this call.
Q. Pursuant to your call there did you make an arrest?
A. Yes, I did.
Q. And do you—I will ask you to look at this picture, sir, which is Plaintiff's Exhibit No. 5 and ask if you will,

sir, if you can state whether you are familiar with that scene?

A. Yes, sir, that is familiar.

Q. And what is that?

A. Two colored men and signs, also the doorway at Webb's grocery.

Q. And is that—is that what you observed, what you testified about?

[fol. 155] A. That is the approximate position.

Q. Did you make an arrest of either one of those persons?

A. I believe I did, the one in the—I did arrest one of the persons.

Q. What happened to the other one?

A. He left rather hurriedly.

Q. Carried this one you arrested down to city jail?

A. Yes, sir.

Q. You recall approximately the time of day that was?

A. As far as I can recall it was around four-fifteen, four-thirty in the afternoon.

Q. Lieutenant, did you observe any other man with signs, colored men with signs in—at the door, did you observe any other colored men with signs at Webb City?

A. Yes, sir.

Q. Where, do you recall?

A. Walking along the sidewalk.

Cross examination.

By Mr. Minnis:

Q. Lieutenant Healey, how many times did you observe picketing in front of Webb City?

A. I can't tell exactly. I shop there regularly; I have seen them there on several occasions.

Q. Other than this arrest that you just testified to, were there any other occasions that you had where you observed [fol. 156] anybody violating the law, or committing any unlawful act in connection with the picketing?

A. Were there any incidents of violence, no. There were no other incidents of violence, of incipient violence.

Q. Now Lieutenant Healey, in connection with this person that you arrested, did your police department through

you as the leading officer in the matter, did you make any investigation of that individual?

A. I turned it over to Sgt. Dietrich. I placed a charge of vagrancy on this man I arrested. I did question him at the time. His answers weren't what they should have been. His answers didn't coincide with the identification he carried.

Q. This individual had more than one type of identification?

A. He certainly did. He had several.

Q. You know how many types of identification he had?

A. At least three different names.

Q. Of your own knowledge, do you know whether or not he was actually identified with the persons who were in the process of picketing in front of the store.

A. Only that he had a sign in his hand.

By Mr. Carter:

Q. Am I correct in my understanding, insofar as this man that you arrested when you came on the scene, did you say that he was doing nothing that you saw and observed in any way in violation, that you arrested him by virtue of your conversation with Mr. Saccucci who indicated that he had done something?

[fol. 157] A. The arrest came as the result of questioning him and finding out that discrepancy in his identification.

Q. That is the reason you arrested him?

A. Yes, sir, that is correct.

Q. You didn't observe his trespassing, you didn't observe his obstructing the door; when you came on the scene he was standing there on the sidewalk near the door?

A. He was on the sidewalk but not obstructing the door when I came on the scene.

Q. Nothing illegal in his doing that, is that correct?

A. The law states if a man is on private property without the consent of the owner, he is trespassing.

Q. He was on the sidewalk and leaning against the doorway, that in your opinion was illegal?

Mr. Bucklew: Object.

The Court: Sustained.

Mr. Carter: I think that is all.

Mr. Bucklew: No further questions.

BEN LARSON, being first duly sworn, testified on behalf of the Plaintiff, testified as follows:

Direct examination.

By Mr. Bucklew:

Q. State your name please.
A. Ben Larson.
Q. Where do you live?
[fol. 158] A. 555 Park, St. Petersburg.
Q. And where do you work?
A. Webb City.
Q. How long have you worked at Webb City?
A. About twelve, fourteen years.
Q. And what do you do?
A. Bake.
Q. Baker?
A. That is right.
Q. Bake bread?
A. Bake for the cafeteria.
Q. Were you working for Webb City at the time the picketing took place, in December of last year?
A. Yes.
Q. Ben, was there any incident during that time when you tried to get some groceries home?

Mr. Minnis: Object.

By Mr. Buckley:

Q. All right, I was trying to speed matters. Ben, do you recall any incident where you had any difficulty during the time that this picketing went on?
A. Well, it was on Saturday. When I bought groceries I took the groceries over to the place where the cab always parks and picks up there on 2nd avenue. So when I went up with the buggy he was going through with the signs and they said you couldn't take any groceries from here, so I just took the buggy and rolled up 9th, just as I went [fol. 159] up 9th one of the people that works there—
Q. When you say "buggy"—

A. The buggy we roll around in the store, wasn't any boy at that time of day and I took the buggy and put the groceries in it and rolled it on out.

Q. You mean one of those wire baskets the customers use?

A. That is right.

Q. And when did this incident take place, whose grocery?

A. Main grocery.

Q. What were you going to do with it?

A. Take it to the house for the children and wife.

Q. Were you allowed to send those groceries?

A. Well, I was going to get a cab and take the groceries.

Q. And who stopped you?

A. The fellow who was picketing at the corner?

Q. Did he have a sign?

A. He did.

Q. Do you know who it was?

A. I don't.

Q. And what time of day was this—on Saturday?

A. Around about three o'clock, four o'clock.

Q. When he stopped you what did you do?

A. I just took it and rolled on up 9th Street toward the alley and just as I got at the alley one of the boys come along that works at Webbs.

Mr. Bucklew: Your witness.

Cross examination.

By Mr. Carter:

[fol. 160] Q. Mr. Larson, you said as you were coming out of the store with groceries—

A. Right.

Q. Somebody carrying a sign told you couldn't come out?

A. He didn't tell me I couldn't come out, he told me I couldn't get a cab at the stand to take the groceries.

Q. He told you that?

A. He told me that I couldn't get a cab.

Q. He wasn't a cab driver?

A. He wasn't; there wasn't even a cab at the station at the time.

Q. What I gather, he was giving you information that there were no cabs there?

A. I didn't wait until any cab came.

Q. All he was doing was giving you information, not trying to stop you, just told you you couldn't get a cab to take the groceries, and you went up the street and a friend of yours took them home?

A. I went on up 9th Street, just as I got to the alley, one of the boys that works there—

Q. He had a car?

A. I just got him to take them along to the house.

Mr. Carter: That is all.

Frances De Money, being first duly sworn, testified on behalf of the Plaintiff as follows:

[fol. 161] By Mr. Bucklew:

Q. State your name please.

A. Frances De Money.

Q. Where do you live?

A. St. Petersburg.

Q. How long have you been a resident of St. Petersburg?

A. Twenty-three years.

Q. What is your business, or occupation?

A. Chief operator, Webb City.

Q. Chief Operator?

A. Telephone operator.

Q. Operate a switchboard?

A. Yes, sir.

Q. How many girls on the switchboard?

A. Three.

Q. And you are the chief operator?

A. Yes.

Q. Do you recall the picketing that took place at Webb City in December?

A. Yes, sir.

Q. Were you working there at that time?

A. Yes, sir.

Q. And during that period—do you in the course of your duties, Miss De Money—do you direct the girls, or do you operate—also work the switchboard?

A. I also work the switchboard.

[fol. 162] Q. Were you working the switchboard during that time?

A. Yes, sir.

Q. What—give us the hours?

A. Nine to six.

Q. Nine to six?

A. That is right.

Q. During the course of that period, did you receive any—through the switchboard—which you answered, did you receive any anonymous calls, or any threats?

A. I did.

Q. And when did—what were the nature, don't tell what was said?

A. In the nature of threats and bad language and insulting language I wouldn't care to repeat.

Q. Was there any threat of any violence of any kind?

A. Yes, sir.

Q. What was the nature of that?

A. Bombs.

Q. Could you identify, Mrs. De Money, any of those voices?

A. I could tell it was colored people, of course I couldn't identify.

Mr. Carter: Object. If you could tell they were colored people you tell me how you can tell, tell me how.

The Court: Are you insisting on it?

Mr. Carter: No.

[fol. 163] By Mr. Bucklew:

Q. Now, Mrs. De Money, how long a period of time did these calls that you have testified about, both as to obscene or dirty language and threats, did they persist or continue?

A. Two days after the picketing; all during the time and about two or three days after the picketing.

Q. Did they reoccur anytime after that?

A. Just a few, now very often.

Mr. Bucklew: Your witness.

Cross examination.

By Mr. Minnis:

Q. Do you know who made these calls?
A. No, I don't.

Mr. Bucklew: The Plaintiff will call under the adverse witness rule, the defendant, Dr. Wimbish.

RALPH M. WIMBISH, being first duly sworn, testified as follows:

Direct examination.

By Mr. Bucklew:

Q. State your name, please.
A. Ralph M. Wimbish.
Q. Where do you live?
A. In St. Petersburg.
Q. What is your business or occupation?
A. Practice of medicine.
Q. How long have you practiced medicine in St. Petersburg?
A. Ten years.
[fol. 164] Q. Are you familiar—are you one of the defendants in this case, are you not?
A. I am.
Q. Are you familiar with an organization known as the National Association for the Advancement of Colored People?
A. I am.
Q. To your knowledge whether or not that is a New York Corporation?
A. It is.
Q. Does the National Association charter local chapters?
A. It does.
Q. Do they have a local chapter in St. Petersburg known as St. Petersburg Chapter of National Association for the Advancement of Colored People?
A. They have.

Q. And do you know who the President of that Corporation is?

A. I am.

Q. Were you President of St. Petersburg Chapter of the NAACP in December, 1960?

A. I was.

Q. Who directs the activities and policies of the local chapter of the St. Petersburg Chapter of NAACP?

A. The Officers and Members.

Q. Yourself as President and other officers and members?

A. That is correct.

[fol. 165] Q. Do you have a board of directors?

A. We have.

Q. Who are the other officers of the St. Petersburg Chapter?

A. The officers include Dr. Orin Ayere, Treasurer; Ethel Manar, Secretary. The Vice President's office is not occupied at the present. The Rev. Mr. Higgs I believe was their Vice President up until the month of December and which time he was transferred. The office is held pro tem by one Leon Coe.

Q. Do you recall an incident at Webb City in December, 1960, when it was picketed?

A. I recall.

Q. Did you as President, together with the other officers of the St. Petersburg Chapter of the NAACP participate in this picketing?

A. I participated in it.

Q. Who instigated this picketing?

A. The organization, the St. Petersburg Chapter.

Q. Of which you are President?

A. Of which I am President.

Q. When was that started, Doctor?

A. It was started December 2; that is the active participation, active engagement and picketing. December 2, 1960, it started.

Q. Did this picketing consist of various members of your association and other members of your race carrying placards up and down in front of Webb City?

A. It did.

[fol. 166] Q. Who prepared those placards?

A. Committee on selective buying of the local branch of St. Petersburg Chapter of which I am President.

Q. When did you start this picketing, during what time of day, if you recall?

A. About four-thirty on December 2.

Q. How many pickets did you start out in front of Webb City?

A. Approximately thirty.

Q. How many entrances—strike that. On how many streets does Webb City, the main store at 9th Street and 2nd Avenue, how many sides does that store have entrances on?

A. That is a little confusing.

Q. Do they have entrances on 9th Street to Webb City?

A. They have.

Q. And do they have entrances on 2nd Avenue?

A. They have.

Q. Are you familiar with any other entrances?

A. I am familiar with other entrances that Webb City has.

Q. But those—the entrances off those two streets where the customers and buying public go in and out of the store?

A. I have entered the other entrances other than those two streets.

Q. What entrance did you direct the picketing to cover?

A. The 9th Street and the 2nd Avenue South side.

Q. I will show you Plaintiff's Exhibit No. 6 and ask you [fol. 167] to state if you are—if those are some of the banners which your organization prepared and furnished the pickets which you put in front of Webb City?

A. That is correct.

Q. I hand you Plaintiff's Exhibit No. 1 and ask you to state whether or not that likewise shows a picket scene there?

A. It does.

Q. And those are all banners and those are all people that belong to your organization so far as you know and which you put out there when you started to picket?

A. These are some of the members of the NAACP.

Q. How long did this picketing continue, Doctor?

A. Approximately four days.

Q. Did you likewise prepare and circulate certain blazers or handbills?

A. We did.

Q. Your Honor, these handbills are attached to Doctor Wimbish's original deposition, may I separate them?

The Court: Have you got anything to substitute?

Mr. Bucklew: This has been filed with the Clerk.

The Court: You don't want to remove it from the Court?

Mr. Bucklew: No, sir.

By Mr. Bucklew:

Q. Doctor, I hand you herewith a blazer which is marked for identification and attached to your original discovery deposition, marked Plaintiff's Exhibit A, state whether or not that was one of the blazers which your organization printed?

[fol. 168] A. This is one.

Q. And in the interest of time, I will ask you to examine this, marked as Plaintiff's Exhibit B, and ask you if that is another?

A. It is.

Q. And the last one marked Plaintiff's B, was that prepared and distributed after the picketing was stopped by order of the Court?

A. Yes, sir.

Q. At this time the Plaintiff will offer in evidence as Plaintiff's Exhibits Nos. 9 and 10, the two blazers which were marked and attached to the original deposition of Dr. Wimbish as Exhibits A & B.

Mr. Carter: Are you offering those and not the deposition itself?

Mr. Bucklew: I can't offer but one thing at a time.

Mr. Carter: I have no objection, of course not.

(Thereupon Plaintiff's Exhibits Nos. 9 and 10, being two blazers, were admitted in evidence).

By Mr. Bucklew:

Q. Now, you also gave your discovery deposition, did you not Doctor on the 3rd day of December in St. Petersburg at the office of the Court Reporter, you gave your testimony under oath on Wednesday, last Wednesday you gave your sworn testimony?

A. You said December.

Q. Of March?

[fol. 169] A. That is correct.

By Mr. Bucklew:

Q. The plaintiff will also offer the deposition in toto, discovery deposition of Dr. Wimbish.

Mr. Carter: No objection.

By Mr. Bucklew:

Q. Now, Doctor, I will ask you if it isn't true that the picketing was instituted by you as President of the St. Petersburg chapter of the NAACP for the purpose of endeavoring to discourage trade at Webb City?

A. Our objective was to bring to the attention of the buying public of St. Petersburg and to the attention of the people of the State of Florida and the attention of the people of United States that we consider ourselves, the Negro, being treated unjustly in a department in Webb City store. The primary objective of the picketing was to do this one thing, to bring it to the attention of the world that we were protesting this form of discrimination and discrimination of a department store in our City.

Q. Was this picketing and these handbills which you have identified here as being prepared by your organization and distributed by your organization, if this was done for the purpose of discouraging trade at Webb City?

A. Yes.

By Mr. Bucklew:

Q. That is all.

Cross examination.

By Mr. Minnis:

Q. First I would like the exhibit which you had Mr. [fol. 170] Saccucci to mark with an "x". Doctor, I will ask—first ask you, are you familiar with the membership of the local branch of the NAACP?

A. I am.

Q. I will ask you to look at that picture and tell me whether or not the person shown on that picture was a member of your local branch of the NAACP?

Mr. Bucklew: The witness was called as an adverse witness under Rule 131. I have no objection to any cross examination of any fact which I asked on direct examination.

Mr. Minnis: I see.

By Mr. Minnis:

Q. Doctor, the question was asked earlier as to what purpose did you intend to serve by picketing Webb City, now would you tell us the circumstances that caused you to want to picket Webb City; what were the circumstances that caused you and the NAACP to feel it was necessary to picket Webb City?

Mr. Bucklew: Object. I didn't ask the purpose. I asked if it was done for the purpose of discouraging trade.

The Court: I think it has been opened up.

A. Well for some time there has been a growing resentment of the process that forbids a negro to engage in certain acts that we feel we are being unjustly denied the privilege of engaging in. We at first sought to request that relief of this particular aspect of our life in that we approached the management of various stores and departments and drug stores and ask that they desegregate their counters and allow negroes to eat there much as they [fol. 171] allowed negroes to use any and all other facilities in the store. This was done in the form of letter writing, in some instances by conferences and on every hand we received a rejection of the proposal and we felt mo-

tivated to prove our feeling to these matters in the only way that we knew how. We sought to do this in a manner in keeping with law and order. This was the provocation primarily.

Mr. Carter: I understand you to say, Dr. Wimbish, in answer to a question from the counsel for the plaintiff that there were thirty pickets outside the store from this organization, am I correct?

A. That is correct.

Q. Now, were you there, Doctor; did you carry any sign?

A. I carried a sign.

Q. Were you there, Doctor, a substantial portion of the time on the four days?

A. I walked for one hour and a half the first day at Webb City.

Q. During the period in which you walked, did you observe any obstruction of entrances, etc.?

A. I did not.

Q. Did you observe any interference with the ingress and egress of persons?

A. I observed none.

Q. Did you observe any person attempting to advise, other than the signs, persons not to go into the store?

A. I didn't observe that.

[fol. 172] Q. Did you observe any picketing within the—on the premises?

A. No, I observed no picketing on the premises.

Q. I understand you to say that the purpose of this picketing was to bring to the attention of the people the fact that Webb City while permitting negroes to spend their money in the store the same as permitting white persons, did not permit them to use the lunch counter facilities without being segregated, is that correct.

A. I don't know that they are able to use it in a segregated manner.

Q. In other words, they couldn't eat in the store?

A. If they stood up and ate what they bought across the counter, perhaps they would.

Q. Now, your purpose in picketing was to attempt if you could—strike that. Did you talk to the people in charge at Webb City about this problem?

A. I presume I talked to a responsible individual in Webb City. Well, I talked with the manager, Mr. V. E. Webb concerning this matter and I requested that he allow negroes to use the lunch counter.

Q. This was before the picketing?

A. Yes, it was.

Q. Now, and as far as you know no change in policy occurred as a result of your conversation with this Mr. V. E. Webb?

A. No change.

Q. Were you concerned about whether Webb City had [fol. 173] sales, etc., wasn't your primary concern the issue of the elimination of segregation?

A. That was the primary concern.

Q. Were you responsible, or your organization responsible for any anonymous phone calls to Webb City?

A. It was not.

Q. Threatening anybody with bombs?

A. It was not.

Mr. Bucklew: Whether he is familiar. He can say whether he knows, move to strike the answer.

The Court: Can you rephrase the question?

Mr. Carter: I asked him "was he?"

Mr. Bucklew: Object.

The Court: Objection sustained: he can state as to himself.

By Mr. Carter:

Q. Were you responsible for any anonymous phone calls?

A. Indeed not.

Q Are you in a position to testify as to whether your organization was responsible?

The Court: Calls for "yes or no." Do you know personally what every member of your organization did or did not do during that period?

Mr. Carter: I will withdraw the question.

By Mr. Carter:

Q. Were you a part of the—strike that. That is all.

[fol. 174] Redirect examination.

By Mr. Bucklew:

Q. You were down there only for one and a half hours carrying a banner on Friday morning, is that right?

A. Friday afternoon.

Q. What time?

A. Between four-thirty and six o'clock.

Q. Were you present when pickets carrying banners which you have testified were prepared by your organization, which were distributed to these pickets, invaded Webbs, inside of Webb's store?

Mr. Carter: Object. The inference is incorrect, the testimony of Dr. Wimbish is only that the organization was responsible for carrying some signs that you showed him on plaintiff's exhibits.

The Court: Sustained.

By Mr. Bucklew:

Q. Were you present during—when there was a demonstration inside of Webb's drug store on Friday afternoon?

A. No, I was not present at any demonstration.

Q. You were not on the inside of the store?

A. No.

Q. I mean by demonstration, were you present when any of the members of your race went inside of Webb's drug store with banners?

A. I was not present when that happened, if that happened.

Q. Did you know anything about it?

A. I knew nothing of it; it was never reported to me.

[fol. 175] Q. But you were there only for a—between—one and a half hours Friday afternoon, what time?

A. Four-thirty and six.

Q. Were you present on any other occasions?

A. I was not.

Q. So of your own personal knowledge you can't testify what took place at any time during the period of this picket-

ing other than when you were personally present, isn't that correct?

A. I don't know.

Q. Of your own personal knowledge other than what somebody told you?

A. I think if you would say, did I see at any time while I was present any acts of misconduct, I would have to answer that, no. I have a measure of confidence in persons responsible to me and I would consider their information reliable enough for me to assume that I have personal knowledge of what went on.

Mr. Carter: He said he has only information from people—this has nothing—

By Mr. Bucklew:

Q. Do you know of your own personal knowledge, what you saw or observed at any time at Webb City, are you familiar with anything that went on there of your own knowledge' other than the times that you were present?

A. Yes, the arrest of this boy Morrison.

Q. Were you there?

A. No, but I went to the jail to investigate the matter after it was reported to me that he had been arrested.

[fol. 176] Q. You went down to the jail?

A. I did.

Q. Did your lawyer at that time fix—bond him out of the jail?

A. No, my lawyer didn't do that.

Q. I just ask you if your lawyer bailed him out. Now, Doctor, I will ask you to testify now as to what your ideals and principles were: I will ask you again if at the time you gave your original discovery deposition on the 30th of March at the Court Reporter's office in St. Petersburg, I will ask whether or not you were asked this question and whether or not you gave this answer which appears on page 14 of the transcript? "And isn't it true that the picketing was instituted for the purpose of endeavoring to discourage trade because they wouldn't comply with your wishes" and the answer was, "That is true." Were you asked that question and did you give that answer?

A. Yes.

Mr. Bucklew: That is all.

Cross examination.

By Mr. Carter:

Q. Dr. Wimbish, I think you testified that you were personally present at four-thirty on Friday, was that the hour the picketing began?

A. It was.

Q. Were you present when it began?

A. I was.

Q. You were there for one and one-half hours?

A. That is right.

[fol. 177] Q. And during that hour and a half that you were present you observed no picketing inside the store?

A. I observed no picketing inside the store.

Q. Now another question, getting to the other aspect, the point he wouldn't let you testify about, would you tell me what was the information, this information with respect to Morrison, you went down to the jail?

A. I went down to the jail to find out whether or not this was a person whom we had authorized or whom we had recognized as a legitimate participant in our project and on my arrival there I found this man was being interrogated by one of the detectives. He was later released that same evening and I questioned him thoroughly and I asked him if he was a member of the NAACP and he told me "no". I asked him was he part of this organized movement and he told me he was not.

Mr. Bucklew: Object to what this witness told him, he has been testifying to what this person told him.

The Court: You have been letting him for the last two or three minutes. Objection sustained.

By Mr. Carter:

Q. Did you talk to this particular man that was arrested?

A. I did.

Q. And did you make an investigation as to whether or not he was connected with the association?

A. Yes, I did.

Q. And the result of that investigation, what did you find out?

[fol. 178] A. Neither a member of NAACP, nor a part of the organized picketing that was taking place.

Q. One other question on that; did you ask the counsel for the NAACP to take any action on behalf of Mr. Morrison?

A. I did not.

Q. Did you take any action yourself?

A. I did not.

Mr. Carter: That is all.

Redirect examination.

By Mr. Bucklew:

Q. I will ask you to examine the picture here shown in Plaintiff's Exhibit No. 2 and ask you to note that placard, the one that is in front, is that one of the banners your organization prepared for picketing?

A. It is.

Q. I will ask you to observe Plaintiff's Exhibit No. 5 and ask you to note the placard here held by a man that has been identified as Morrison holding at that particular time upside down, and ask what the difference is in that and the one prepared by your organization?

A. None.

Q. It is the same placard that this Morrison boy carried or held in his hand that was prepared by your organization is that correct?

A. That is correct.

Mr. Bucklew: That is all. Plaintiff Rests.

MOTIONS FOR JUDGMENTS FOR DEFENDANTS

Mr. Carter: We make a motion for judgment for the defendants. Make the motion in respect to Mrs. Wimbish, [fol. 179] that there has been no evidence which in any way

connects her with this cause of action in any respect whatsoever and the deposition which has been introduced by the Plaintiff clearly shows that Mrs. Wimbish was not involved, was physically disabled at the time the picketing took place and, therefore, was not properly a defendant in this cause, and we think that the motion should be allowed.

Mr. Phillips: For the record we will concede that motion as being well taken.

Mr. Carter: Further motion for the other defendants on several grounds, one, that the evidence shows that there was picketing at the stores; the evidence discloses that the picketing was peaceful and we believe that this peaceful picketing in order to secure an abatement of discrimination is protected by the 14th amendment to the Constitution of the United States and section 13 and 15, Declaration of Rights of the State of Florida. I have cases in support of this but I will not burden the Court with this at this time. Two, There is no equity shown for the allowance of this injunction because there has been no showing of any irreparable damages. Three, the testimony indicates that the picketing which took place for four days, that there was only one arrest and this arrest was for a person obstructing one of the entrances to the premises. There has been testimony that there was some demonstrations inside the store, but this in dispute and it is clear, if true, that these demonstrations stopped before this action was instituted. And all the testimony of the plaintiff shows that there was no [fol. 180] violence that he saw and that the demonstration to which he testified to lasted for only fifteen minutes.

Moreover there has been no connection between these defendants and either the picketing inside the store, or the person who was arrested for blocking an entrance. On this basis we think we are entitled to judgment.

The Court: I will withhold ruling on the motions and let counsel continue with such other testimony or evidence as they may have.

LEON COX, JR., being first duly sworn, testified on behalf of defendants, as follows:

By Mr. Williams:

Q. State your name to the Court.
A. Leon Cox.
Q. Where do you live?
A. 1611 Russell Street, St. Petersburg.
Q. What is your occupation?
A. Instructor, Gibbs Junior College.
Q. How long?
A. Four years.
Q. Now, Mr. Cox, I direct your attention to sometime in the early part of December, 1960, do you recall any demonstration within the City of St. Petersburg?
A. I do.
Q. Do you recall whether or not you were connected with that demonstration in any way?
A. I was.
[fol. 181] Q. What was your connection?
A. Adviser to the Youth Council.
Q. And as adviser to the council what was your duties?
A. Helped to advise them how to conduct themselves in carrying out the picketing.
Q. And previous to the picketing, that began on December 2, were there any meetings?
A. There were at Trinity Presbyterian Church.
Q. Was there any instructions?
A. There were.
Q. And what were the instructions that you gave to the pickets?
A. I instructed them how to picket, the space that was to be left between each person on the picketing line, pointed out to them that they were not to talk to anyone, not to block any entrances, walk close to the street as far away as possible from the entrance to the store we were picketing.
Q. How many feet apart were they instructed to walk?
A. Approximately fifteen.
Q. When did this picketing originally begin, Mr. Cox?
A. It was on the 3rd of December, 3rd, I think.

Q. You know the day?

A. Friday.

Q. What time did it begin, sir?

A. I don't recall the exact time, must have been about five, or five-thirty, between five and six. I was at school at this particular time.

[fol. 182] Q. You wouldn't know?

A. I wouldn't know.

Q. Did you have occasion to go to the scene of the picketing at Webb City?

A. Every day during my lunch hour and every evening after school.

Q. Were you there on the first day?

A. I was there on the first night.

Q. Now, during the time that you was there at Webb City, what did you observe in respect to the pickets in carrying out your instructions?

A. I observed the pickets were carrying out my instructions.

Q. Now, Mr. Cox, you indicated that you were adviser to the Youth Group?

A. Yes.

Q. How many persons are in the Youth movement?

A. Approximately fifty persons in the organization.

Q. Fifty persons; how many participated in the picketing at Webb City?

A. I would say approximately—I don't quite understand the question.

Q. Of the Youth Group that you advise?

A. I would say at times we had there about ten, other times twelve.

Q. Tell me this, Mr. Cox, do you know all the members of the Youth Council?

[fol. 183] A. I know all of them.

Q. Do you know all of them when you see them?

A. I think so.

Q. I will show you this picture Mr. Cox and I refer, refer directly to the persons—this is Exhibit No. 5, Plaintiff's Exhibit No. 5, refer to the person who is under the "x" mark, do you recognize that person?

A. I do not.

Q. To your knowledge is he a member of the Youth Council?

A. To my knowledge he is not.

Q. Now, Mr. Cox, you indicated that you gave certain instructions to the pickets, were instructions given with respect to telephone calls?

A. No instructions with respect to telephone calls.

Q. Did you personally make any telephone calls to Webb City?

A. I did not.

Q. Now tell me this, Mr. Cox, you indicated that you were on the scene every day, during the time that you were on the scene—

Mr. Bucklew: Object, the witness testified he was on the scene every night.

Mr. Bucklew: Objection withdrawn.

By Mr. Williams:

Q. During the time that you were there, did you observe any pickets obstructing any doorways?

A. I did not.

[fol. 184] Q. During the time that you were on the scene, Mr. Cox, did you observe any pickets with respect to holding down card in front of any customers?

A. I did not.

Q. Do you know of any incidents surrounding the picketing?

A. I know of none, except the arrest made by an officer; I think he has testified already. I don't know who it was, only heard about it.

Q. Now, tell me this, Mr. Cox, during the time that you were on the scene there at Webb City, did you observe any pickets inside the store?

A. I did not. I gave them specific instructions not to go inside the entrance.

Mr. Williams: You may interrogate.

Cross examination.

By Mr. Bucklew:

Q. Who was in charge of the picketing at Webb City between December 2nd, or as long as the picketing continued?

A. The persons on the scene that were in charge of it were Mr. Henry Lions who is a member of the Youth Council and Thomas Lockhart, who is also a member and also President.

Q. And is he connected with your Youth movement?

A. It is Youth Council and he is President.

Q. Is this his picture here, if not who is it, Exhibit No. 6?

A. That appears to be a reporter for St. Petersburg [fol. 185] Times, Sam Adams.

Q. Now, you say you did have somebody there that was with the Youth movement in charge of the picketing?

A. I did.

Q. And if there was picketing and carrying of banners and display of placards inside of Webb City after this picketing was commenced, it is your contention, as I understand, that you did not have anything to do with it?

A. I am contending that there was no picketing carried on inside the store.

Q. Were you there inside of the store all the time?

A. I was not there all the time; I left persons in charge to report to me what happened.

Q. Of course, none of them reported that there had been a display of banners throughout the store?

A. None of them.

Q. You instructed these pickets to not obstruct the entrances, and to be at least fifteen feet apart, is that correct?

A. That is correct.

Q. I will ask you to observe the—I will ask you to examine Plaintiff's Exhibit No. 1, do you recognize any of those pickets in that picture?

Mr. Minnis: Your Honor, object.

(Question read by Reporter.)

The Court: That is alright. Go ahead.

[fol. 186] By Mr. Bucklew:

Q. Will you answer that question?
A. Now what is the question?

(Question read by Reporter.)

(answer continued) I recognize Mrs. Williams, she had the little banner; I recognize a reporter for St. Petersburg Times, Sam Adams, and I cannot recognize the others because they are obscured by the banners.

Q. Will you observe the pickets in that particular picture and is that in compliance with your instructions of fifteen feet apart?

Mr. Minnis: Object. The Court will take judicial notice of the fact that a camera reflection of distance is dependent upon the type of lens.

The Court: Goes to the weight rather than admissability. Objection overruled.

(Question read by Reporter.)

Mr. Carter: My objection, I do not see how the witness is in a position to answer that question.

The Court: Are you in a position to answer that question from the picture before you?

A. I am not in a position to determine the number of feet between the persons.

The Court: You are not in a position to give an estimate whether that is within the limits of the instructions that you gave?

[fol. 187] A. It is difficult for me to determine the distance between the second and third pickets because a reporter is hanging on to one of them; the distance between the first and second picket is in keeping with the instructions I gave.

Q. I will ask you to examine plaintiff's Exhibit No. 6, do you recognize that second picket?

A. I do not recognize the second picket because the face is partially blocked.

Q. His face is partially in view and is he one of the members?

A. I do not know because his face is blocked.

Q. Do you recognize the placard as being one of your placards prepared and distributed to the pickets?

A. I recognize it as being one similar to the one we prepared.

Q. Would you observe that picture a little more; state whether you are able from observation to know whether the pickets are carrying out your instructions of fifteen feet apart?

A. I will state again, I can only tell about the first and second, there is approximately fifteen feet between them.

Q. Between the first and second picket?

A. Yes.

Q. I am also referring to this picket, that one you can't recognize, this young looking boy, you would say that, in your opinion, he is fifteen feet from behind the first picket?

A. (Witness does not answer.)

Q. What is the name of the first picket?

[fol. 188] A. Mrs. Isaac Williams.

Q. Was she one of the ones in charge of your picketing?

A. I did not appoint her.

Q. Was she one of the people in charge?

A. I don't know.

Q. Would you say that this young looking boy with a placard, similar to the placard that you made, is fifteen feet from the first picket?

A. As far as—it would not appear that he is, that he is more than fifteen feet from the first picket.

Q. Were you there when this picture was taken?

A. I was not.

Q. Friday?

A. I was not.

Q. What time did you get there Friday?

A. Between five and six.

Q. If there had been any demonstration inside the store before that time you, I presume, don't know anything about it?

A. I do not; I feel if there had of been I would have been told about it.

Q. Now here— what is your position, you are an instructor with what college?

A. Gibbs.

Q. Is that a private institution?

A. State supported institution.

[fol. 189] Q. Is this part of the curriculum at this institution?

Mr. Minnis: I object.

A. I don't understand.

The Court: Ask another question.

By Mr. Bucklew:

Q. I will withdraw the question in view of the unanimous objections.

By Mr. Bucklew:

Q. What is taught at this Junior College that you are an instructor at?

Mr. Williams: Object. No bearing.

The Court: Sustained.

By Mr. Bucklew:

Q. You have stated that you had a class, or instruction class in picketing?

A. I did not.

Q. Tell me what you did state relative to this Youth Movement?

A. I said I was advisor to the group—movement, and specifically as far as the picketing was concerned, I advised them how to conduct themselves during the picketing, to keep away from the entrance, to walk as close to the street as possible away from the entrance, not to stop and talk to anybody, to keep moving at all times and above all not to go inside the store they are picketing.

Q. And who is in charge of this movement?

A. I am the adviser; this is a part of the local branch of NAACP in St. Petersburg.

Q. And you are the adviser for this Youth movement in [fol. 190] the St. Petersburg chapter of the NAACP, is that correct?

A. Correct.

Q. You advised them to stay away from the entrances and from close proximity to the store, is that correct?

A. That is correct.

Q. Again referring you to Plaintiff's Exhibit No. 1, and ask you to observe that picture and state whether those pickets are carrying out your instructions?

A. They are indeed; they are as far away from the store as they can get, you have green benches on the left and spectators.

Q. Were all the pickets in the Webb City picket movement, were they all members of your Youth group?

A. They are interested citizens from the community included.

Q. And they joined up in this picketing operation after you all had started?

A. After the NAACP had started.

Q. After the NAACP started, then these interested citizens opened up with this movement, is that right?

A. They joined up with the movement.

Q. Had they received instructions from you how to picket?

A. They did not receive instructions from me; they received instructions from the selective buying committee which was from the local branch of NAACP.

Q. When did they receive those instructions?

A. I do not remember.

Q. Were you present.

[fol. 191] A. I was not present at all of the meetings, some of them I was.

Q. Were you present when these volunteer pickets wanted to get in this act, were you present when they were given instructions?

A. All of these were volunteer pickets.

Q. I am just asking you a simple question, were you present when these pickets other than the youth movement, were you present when these other pickets were specifically given instructions on how to picket?

A. On some occasions.

Q. But not on all?

A. I did not make all the meetings.

Q. Then, if I get your testimony, that the pickets that you had instructed along with the Youth Movement were

from various walks of life and just wanted to join in the picketing, would that be a fair statement?

A. All of these pickets were from various walks of life: we had some students, housewives, professional and laborers.

Q. I am trying to get some answer to these questions. I am asking you if in addition to your instructed or coached pickets which belong to the youth movement, whether or not this was instruction to just them, or whether anybody who wanted to could get in the act and carry a banner.

A. It was instruction to the citizens of St. Petersburg. [fol. 192] Q. And the movement started by the NAACP and the branch of your NAACP known as the youth movement, is that correct?

A. I would say, yes.

Q. Some of these other people that got in there with banners, etc., did not pursue the policies laid down by you or other members of the NAACP. I guess you had no control over that?

Mr. Carter: Object, no predicate that anybody else got in or didn't follow instructions.

The Court: The question is practically in the form of a statement. Objection sustained.

Q. Did you have control—were you chairman of the Youth Movement?

A. Adviser.

Q. Did you as adviser of the Youth Movement have any control over the pickets other than the ones that you had instructed?

Mr. Carter: Object. It's been answered about three times, seems counsel is engaging in argument.

The Court: It borders on repetition. Read the question back.

(Question read by Reporter.)

A. I had control over the Youth Organization to which I am adviser.

The Court: Is that the limit of your control?

A. That is right.

Mr. Bucklew: That is all.

[fol. 193] Redirect examination.

By Mr. Williams:

Q. Were you also a member of the selective buying committee?

A. I was vice chairman.

Q. Now, as Vice Chairman officer of the selective buying committee—strike that. Was pickets other than youths engaged in these demonstrations?

A. Yes.

Q. Under whose auspices were these pickets?

A. Committee appointed by local branch, selective buying committee.

Q. Mr. Cox, you indicated you were both adviser to the youth group and vice chairman of the committee on selective buying, were any outsiders—were there any outsiders who sought to join in the demonstration?

A. Not to my knowledge, no.

The Court: The question was any "outsiders?"

Mr. Williams: Let me rephrase it.

By Mr. Williams:

Q. Was there persons in the pickets other than those approved by the selective buying committee?

A. No.

Recross examination.

By Mr. Bucklew:

Q. Will you look at Plaintiff's Exhibit No. 5 and state whether you recognize as one of the members of one—of your youth movement, the picket standing there with the placard in the white shirt?

[fol. 194] A. I don't recognize either one.

THEODORE LOCKHART, being first duly sworn, testified on behalf of the defendants, as follows:

Direct examination.

By Mr. Williams:

Q. State your name, please?
A. Theodore Lockhart.
Q. Where do you live?
A. 2153 16th Ave. South, St. Petersburg, Florida.
Q. And what is your occupation, Mr. Lockhart?
A. I am a student.
Q. What institution?
A. Gibbs Junior College.
Q. Now, Mr. Lockhart, are you familiar with the Youth Council of the NAACP?
A. I am.
Q. What is your connection with that organization?
A. I am the President of the Youth Council.
Q. Were you President of the Youth Council on December 2, 1960?
A. I was.
Q. Did you have occasion, Mr. Lockhart, to meet with this group with respect to a certain demonstration to be had in the City of St. Petersburg?
A. I was.
Q. Now, did you meet prior to December 2, 1960?
A. Yes.
Q. And at that time, at these meetings prior to the demonstration on December 2, and after, did anyone meet with you?
[fol. 195] A. Yes.
Q. Were any instructions given to you, to your group with respect to the demonstration?
A. Yes, instructions were given as to the—
Q. Yes, or no?
A. Yes.
Q. Who gave you the instructions?
A. Mr. Cox.
Q. Were the instructions given by anyone else to your group?
A. Yes.

Q. Who else?

A. Mr. Herber and Mr. Williams.

Q. Mr. Lockhart what was the instruction that you recall?

Mr. Bucklew: Object, as to what he was told or instructed, object on the ground of hearsay; second, it would be cumulative.

The Court: Aside from the objection by the Plaintiff, it would be cumulative.

By Mr. Williams:

Q. Mr. Lockhart, did the group have occasion to participate in a series of picketing at Webb City?

A. Yes.

Q. When did that demonstration begin, sir?

A. The exact date I don't recall.

Q. You know the day?

A. It was on Friday.

Q. About what time?

[fol. 196] A. Between four-thirty and five.

Q. And what was your roll in respect to these demonstrations?

A. My roll, I was student leader.

Q. Were you on the scene from the beginning?

A. Yes, at the beginning.

Q. As a student leader did you direct any picket to go inside of Webb City?

A. By no means.

Q. To you knowledge did any picket go inside?

A. None whatsoever.

Q. How long were you on the scene Friday afternoon, December 2?

A. Until all the pickets were withdrawn.

Q. About what time was that?

A. Oh, shortly after dark; don't recall the hour, we weren't down there any more than two hours.

Q. As President of the Youth Council, are you personally acquainted with every member of the youth group?

A. The largest number.

Q. Can you identify every member of the youth council?
A. Not every member, no.
Q. Can you identify all members of the youth council that participated in the picketing?
A. Yes.
Q. Now, Mr. Lockhart, I show you Plaintiff's Exhibit No. 5 and I refer specifically to the person under the "x" mark, can you identify that person?
A. No, I can't.
[fol. 197] Q. Ever seen him before?
A. No, I haven't.
Q. To your knowledge is he a member of the youth group?
A. No, he isn't.
Q. Now, Mr. Lockhart, you indicated that you were on the scene on the first day of the picketing?
A. Yes.
Q. Were you on the scene any other time?
A. I was down there every day that the picketing was going on.
Q. Every day?
A. Yes.
Q. During the period of time that you were there, Mr. Lockhart, did you observe any violence, any harm?
A. None.
Q. Did you observe any pickets blocking the entrance to Webb City?
A. No.
Q. Now, tell me this, Mr. Lockhart, did you yourself make any telephone calls to Webb City?
A. No, I didn't.
Q. Have you ever made any telephone calls to Webb City?
A. No, I have never made any.

Cross examination.

By Mr. Bucklew:

Q. When do you go to school?
A. Beg pardon.

[fol. 198] Q. When did you attend school?

A. I attend school every day.

Q. What time of day?

A. Same now as at that time.

Q. What's that time?

A. From nine until one-thirty.

Q. What time did this picketing take place on Monday and Tuesday following the beginning of the picketing on Friday?

A. Students participated after classes.

Q. So then the students didn't picket from nine or nine-thirty in the morning until one o'clock, they didn't come on for picketing until one o'clock?

A. Some of them did, some didn't have classes.

Q. What do you mean?

A. This is a college, some of them don't—

Q. What I am getting at, the hours at this college, do you attend school in the morning?

A. I do.

Q. What about these other people?

A. It varies.

Q. Classes are varied, some of them have complete freedom in the morning?

A. I wouldn't know.

Q. What I am trying to get at, were members of this youth movement of which you are President, did they participate in this picketing in the morning?

[fol. 199] A. Oh, I imagine they did.

Q. You don't know who these other pickets were that participated in this picketing in addition to members of your youth movement?

A. Not personally, no.

Q. And as I understand it—you were present on your—what times?

A. When I wasn't in class.

Q. On Friday you got there about what time?

A. Between four-thirty and five.

Q. Was that when the picketing began there?

A. It began—

Q. And how many of you started at that time?
A. At Webb's?
Q. That is exactly what we are talking about?
A. I imagine fourteen or fifteen.
Q. Fourteen or fifteen?
A. Yes.
Q. You mean the entire number of pickets were just the members of your youth movement?
A. Well at the time some of them were youth members, some from other organizations.
Q. So far as you know what was the total number of pickets that started the picketing at Webb City on Friday, whether the youth movement or members of the big chapter or St. Petersburg Chapter of NAACP, how many were there?
A. I would say fifteen at the most.
[fol. 200] Q. How long have you been attending Gibbs Junior College?
A. Since August.
Q. Since August?
A. Yes.
Q. Do you have a scholarship there?

Mr. Minnis: Object.
Mr. Bucklew: Withdraw the question. No further questions.

By Mr. Bucklew:

Q. One other question. You recognize this fellow in the white shirt, you said you couldn't identify the man on the left, what about the fellow immediately in the picture on the right, you can't identify him either can you?

Mr. Carter: Identify who?
Mr. Bucklew: The man in the white shirt, Plaintiff's Exhibit No. 5.

HENRY LYONS, being first duly sworn, testified on behalf of the Defendants as follows:

Direct examination.

By Mr. Minnis:

Q. Would you state your name?
A. Henry Lyons.
Q. Where do you live?
A. 2645 14th Avenue South.
Q. St. Petersburg?
A. Yes, sir.
Q. How long have you resided in St. Petersburg?
[fol. 201] A. Since the beginning of the school term, that is September.
Q. What is your occupation or profession?
A. Student at Gibbs Junior College.
Q. And how long have you been a student at Gibbs?
A. Since the beginning of the school term in September.
Q. Now, Mr. Lyons, do you recall a certain demonstration carried on at the plaintiff's establishment known as Webb City on or about December 2, 1960?
A. December 2, you say?
Q. Yes, or about?
A. Yes, sir, I do.
Q. Did you participate in these demonstrations?
A. Yes, sir, I did.
Q. What was your roll?
A. My roll as a participant in the demonstration, group leader in the demonstration.
Q. As a group leader what were your duties or responsibilities?
A. As a group leader in the demonstration, my duties and responsibility was to see that the participants in the demonstration carried the demonstration out in strict order as it was related to them.
Q. There were orders given as to how the demonstrations were to proceed?
A. Yes, there was.

Q. Did you actually participate, did you carry a picket sign?

A. Yes, I did.

[fol. 202] Q. On the date that these demonstrations began, were you present on or about the premises of the Plaintiff?

A. Yes, I was.

Q. You were there when the actual picketing began?

A. I was.

Q. Did you observe any picketing going on inside the Plaintiff's establishment?

A. No, sir.

Q. To your knowledge, do you know actually whether or not persons from your group took part in any such demonstration?

A. To my knowledge none whatsoever.

Q. Mr. Lyons, during the course of picketing, would you tell the Court please, just how you were picketing, that is as to your position on the street and etc.?

A. Our positions as instructed was to stay approximately fifteen feet apart so that we might not congest the flow of traffic going in and out of the store and stay nearest the street and to not talk to anyone and should anyone come up who was either sympathetic or opposed to our movement we were to instruct them to speak to the group leader which was myself.

Q. As a group leader did you observe any of the persons violating these orders or not carrying out these orders?

A. As a group leader didn't observe anyone. The demonstration was carried out as planned and instructed.

Q. Did you—first let me ask you this—how many times, how often were you at the scene of the picketing?

[fol. 203] A. I was at the scene of the picketing from the beginning of it. On Friday afternoon, that Saturday, almost all day, and every day during my lunch hour and after school until I left that night.

Q. Did you observe during the time that you were there any interference with the customers of the plaintiff as they went in and out of the store?

A. No, sir; not during any time I didn't.

Q. Did you observe any form of violence during that time, during the time the picketing was being carried on?
A. None whatsoever.
Q. Did you at any time personally make any telephone calls to the plaintiff's establishment, place of business?
A. No, sir, not a one.
Q. To your knowledge, did any other persons make any such calls?
A. No, sir.

Mr. Minnis: No further questions.

Cross examination.

By Mr. Bucklew:

Q. You have been a resident of St. Petersburg since September, I believe?
A. Yes, sir, beginning of school term.
Q. Is that your permanent residence now, St. Petersburg?
A. Temporary.
Q. Where are you from originally?
A. Gainesville, Florida.
Q. And you have moved to St. Petersburg to enter school?
[fol. 204] A. That is right.

Mr. Bucklew: No further questions.

Jesse L. Fennell, being first duly sworn, testified on behalf of the defendants as follows:

By Mr. White:

Q. State your name to the Court, please?
A. Jesse L. Fennell.
Q. Where do you live?
A. 2027 7th Avenue South, St. Petersburg, Florida.
Q. How long have you been a resident of St. Petersburg?
A. Since 1938.

Q. What is your occupation or profession?

A. I am a minister of the New Hope Baptist Church, St. Petersburg, Florida.

Q. And how long have you been a minister?

A. Since 1938.

Q. How long have you been the Pastor of this particular Church?

A. Since September 27, 1941.

Q. Reverend, do you recall a certain demonstration carried on at Webb City on or about December 2, 1960?

A. Yes, I do.

Q. To your knowledge, were there any meetings regarding these demonstrations prior to the actual time when the demonstrations began?

A. Yes, there was.

Q. Who were these meetings held by, who called these meetings?

[fol. 205] A. They were called by the committee known as the selective buying committee.

Q. Were you a member of the selective buying committee?

A. Yes, I was.

Q. And as a member, what were the functions of this?

A. This committee was to formulate policies against those stores who practice segregation against the Negroes.

Q. Were there any policies made as far as the conduct of the pickets, as to how they were to conduct themselves?

A. Yes, there was.

Q. Would you tell the Court please, just what these policies were?

A. Well, these persons were, that is those who were to participate in them, were to act orderly, were to conduct themselves in an orderly manner; they were not to talk or engage in conversation while picketing.

Q. Now, did these policies apply to student demonstrators as well as adults?

A. They did to everyone who was engaged in this picketing.

Q. Now, Reverend; tell me, did you have occasion to actually participate in the picketing at plaintiff's business establishment?

A. I did not picket myself, but I observed those who were picketing.

Q. In other words you did spend time on the scene of the picketing?

[fol. 206] A. Yes, I did.

Q. Just how often did you spend time there?

A. Well, after the picketing was going on, I did go by and observe perhaps once or twice.

Q. How long did you stay at these times that you went there?

A. As to really definite as to the time limit, I don't know just what it was.

Q. Just how many days was this picketing carried on, do you recall?

A. The number of days, that I can't recall.

Q. Now, during the time that you did observe the picketing, would you tell the Court, please, just what you observed as far as the conduct of the pickets was concerned?

A. Well, what I was able to observe, my observation was that the picketing was very orderly, they were going according to instructions that they had been given.

Q. Did you observe any form of violence during the time that you were there?

A. No, I did not.

Q. Did you see any of plaintiff's customers being interfered with in any way by the pickets?

A. No, I did not.

Q. Did you observe any pickets inside the plaintiff's store?

A. No, I did not.

Q. Reverend, tell me, did you make any telephone calls to the plaintiff's business establishment during this time?

A. No, I did not.

[fol. 207] Q. Do you have any knowledge, personal knowledge of any person having made threatening calls to the plaintiff's business establishment?

A. No, I do not.

Mr. White: No further questions.

Cross examination.

By Mr. Bucklew:

Q. Reverend, you are familiar with the signs and placards displayed by the members of the picketing line, are you not?

A. I think I am.

Q. I will ask you to examine a picture which has been marked plaintiff's exhibit No. 2 and state whether that is a fair portrayal of the signs and placards which were displayed by your picketers at Webb City?

A. Yes, it was, with the exception of one I can't see the writing on one.

Q. Which one is that?

A. This one.

Q. If you will just mark that with an "x" and put your initials there, that is the only sign—exhibit No. 2; now that is the only placard that you can't identify as being a placard which is not one of the placards approved or furnished by the selective buying committee, is that correct?

A. That is correct.

Q. Reverend, you say—what was your position with the selective buying committee?

[fol. 208] A. I was a member.

Q. Who was chairman?

A. Attorney Williams.

Q. This attorney sitting here?

A. Right.

Q. He was the head of it?

A. That is right.

Q. Reverend, are you familiar with whether or not there was any labor dispute going on, there wasn't any strike as far as labor was concerned?

Mr. Minnis: Question is quite general.

Mr. Bucklew: Let me withdraw that question in order to save time.

The Court: Withdraw the question.

By Mr. Bucklew:

Q. Reverend, as a member of the selective buying committee, you were familiar with what could be purchased at Webb City and what could not?

A. I was.

Q. Did you occasionally shop in Webb City?

A. Yes, I did.

Q. You familiar with the fact that Webb City employed some, approximately 150 members of your race?

Mr. Carter: Object, I think that is irrelevant, immaterial.

The Court: Yes, not in cross.

By Mr. Bucklew:

Q. Now, pursuant to the buying policy do I understand you to—strike that. So far as buying of merchandise [fol. 209] in Webb City, are you familiar with any article for sale in Webb City that couldn't be purchased by you or members of the Negro race at the same price that I could buy it, with the exception of food?

Mr. Carter: Object, irrelevant, immaterial, has no bearing.

The Court: Think the issue is drawn a little bit narrow.

Mr. Bucklew: No further questions.

Mr. Carter: Our next witness is a member of counsel.

The Court: Do you have any objection?

Mr. Bucklew: I do object.

The Court: If you insist on that we will have to abide by it.

Mr. Bucklew: I do insist.

The Court: Can you tender it in the record and then we will discuss it.

Mr. Bucklew: Let him proffer the testimony he intends to prove—absolutely prohibitive according to our rules of practice, it's entirely unethical for counsel to offer himself as a witness unless—

The Court: You can put it in, tender it, what you propose to have the witness testify to.

Mr. Carter: We will expect him to testify as follows under the rule and ask that his testimony be received. I will now proffer the testimony; what we want to present is counsel's testimony, which happens to be Mr. Williams, is the fact that he had, as an agent of the chairman of the Selective Buying Committee and regarding the picketing [fol. 210] to take place, that he had a conference with the police officers, the chief of police the first day the picketing was to take place, received from them information as to the number, where it should take place and how it should go on and that he transmitted those instructions back to these people and they attempted to carry it out.

Mr. Bucklew: I think that has been testified to by the chairman of the Youth Movement and by a member of the Selective Buying Committee, with the possible exception of a conference with the police officer; if he did that the police officer himself is the proper witness to testify whether Attorney Williams did confer with him.

The Court: The rest of it is covered, is your officer here.

Mr. Williams: The Chief of Police is not here.

Mr. Bucklew: Have to object to any purported conversation.

Mr. Carter: My problem is not the objection the defendant is making, but whether his testimony is unethical, if that is the Court's position—

The Court: Well, there is a rule against it, unless it is under necessity, I can't see that would apply here, and as far as the police inquiry, conference, is concerned, the best evidence would be the officer himself.

The Court: Dr. Wimbish has been previously sworn when he was an adverse witness and now assumes the stand as direct witness on behalf of the defendant.

[fol. 211] RALPH M. WIMBISH, being first duly sworn, testified on behalf of the Defendants as follows:

Direct examination.

By Mr. Minnis:

Q. Dr. Wimbish, did you attend personally any of the planning meetings in regard to picketing Webb City?

A. I did.

Q. And did the information or instruction given at these meetings that you attended, how did that information correspond with the actual carrying out of the picketing?

A. To my knowledge the information that was received at the meetings corresponded well with what was actually done.

Q. You mean what was actually done during the picketing?

A. Yes, in other words the plan was carried out to my knowledge according to instructions.

Q. And during the time that you were present did you observe anyone going into Webb City store as a picket with a sign?

A. I did not.

Q. Did you, or any officer of the NAACP in your presence give any instruction to any picket to go into the Webb City store?

A. I did not give any instructions and no officer in my presence gave any such instructions.

Q. Did you, or any officer in your presence call Webb City store during the period that it was being picketed?

A. I did not.

Q. Did anyone else in your presence call Webb City?

[fol. 212] A. No.

Q. Doctor, did you authorize anyone to block the entrances or in any way, interfere with people going to and from Webb City during the period of picketing?

A. No.

Q. Did anyone else in your presence authorize that?

A. No.

Q. Did you observe that anytime during the period that you were watching the picketing?

A. No.

Q. Doctor, I show you Plaintiff's Exhibit marked No. 5, do you recognize either one of those persons?

A. I recognize one of them.

Q. Which one do you recognize?

A. The man with the cigarette in his mouth, with his hands against the window at Webbs.

Q. What caused you to recognize that individual?

A. I had the occasion to see and talk with him during the month of December 1960.

Q. Do you know where you talked with that man?

A. At the city jail.

Q. Was that individual one of the authorized pickets?

A. He was not.

Q. Is this the same individual that was arrested with three or four aliases—I am through with that you can put that down.

A. He is.

[fol. 213] Q. Doctor, did you or your organization bond out this individual that we just identified on Plaintiff's Exhibit No. 5, did you bond him out or help this fellow out?

A. No, we did not.

Q. Can you give the Court any reason why you did not assist this individual?

A. Because we felt no alliance with him. He denied that he had any with us.

Mr. Bucklew: Was this conversation that you had with this particular witness which you testified he denied certain things, was that in the presence of any officer or agent or employee of Webb City?

A. No, but it might have been in the presence of Officer Dieterich, I am not sure of that.

Mr. Bucklew: I move to strike the answer of the witness, hearsay.

The Court: That only goes to the fact that he denied any association, just the last answer.

The Court: Doctor, did you or anyone else who was a member of the NAACP local chapter authorize any picket to go into Webb City with picket signs?

A. No.

The Court: While you were present at Webb City, did you observe anyone go into Webb City with picket signs?

A. No.

[fol. 214] By Mr. Carter:

Q. You are President of the local chapter St. Petersburg branch?

A. I am.

Q. What are the objectives of the NAACP, Doctor?

Mr. Bucklew: Court please, I don't mind listening to a discussion on that, but I don't think it is material to this.

Mr. Carter: I will withdraw that.

By Mr. Carter:

Q. Let me ask you this, since you have been president of the St. Petersburg Chapter of the NAACP, has this organization engaged, either in regard to this activity or any other activity, in any activity, which called for the use of violence?

A. It has not.

Q. Now, in so far as the picketing at Webb City was concerned, it is sponsored by the St. Petersburg Chapter of NAACP, did you as President of the NAACP make it clear that the association's participation in this activity was to be a peaceful picketing, and a peaceful attempt to persuade Webb City to change its policy?

Mr. Bucklew: Object, clearly leading, giving the witness the answer and calling for merely yes or no answer.

The Court: Well taken.

Q. Now, I think you testified as President of the St. Petersburg Chapter of the NAACP that you got involved in this actually because of the policy of segregation with respect to lunch counters at Webb City store?

Mr. Bucklew: Immaterial and irrelevant.

The Court: It's been gone into; I think we are on a treadmill, it's already been covered.

[fol. 215] Mr. Carter: I have no further questions.

Cross examination.

By Mr. Bucklew:

Q. Dr. Wimbish, how much time did you actually spend at Webb City during the period this picketing was going on?

A. Not more than one and a half hours.

Q. So then, Friday, Saturday, Sunday, Monday, Tuesday and part of Wednesday, six and a half days, you spent one and a half hours at Webb City, is that right.

A. That is right.

Mr. Minnis: Object, no testimony in the record as to any six days.

The Court: Rephrase the question.

Mr. Bucklew: I will rephrase the question.

By Mr. Bucklew:

Q. For the entire period of time that the picketing continued at Webb City, beginning on Friday and lasting until it was enjoined by the Court, do I understand you were there the total period of one and one-half hours?

A. That is right.

Q. Then so far as you know, of your own personal observation and knowledge, you can only testify as to what took place during that period that you were there, so far as your own knowledge and observation is concerned?

A. That is correct.

Q. Anything else that you could testify about would have to be something you were told by, or informed by others, is that correct?

A. That is correct.

Q. Did you personally, or do you know of any of your [fol. 216] officers refusing the help of any pickets that showed up at Webb City, do you know of running off any

pickets, that your organization discouraged or refused the assistance or help that showed up there to help in the picketing?

Mr. Minnis: Object. He was only there an hour and a half, if the question is confined to that period, then it is proper?

The Court: Well, the question was sufficient to cover the period he was there because it asked him if he knows of his personal knowledge.

A. I know of none.

Redirect examination.

By Mr. Carter:

Q. Did I understand your testimony that you were there for one and a half hours, a total period of time?

A. That is right.

Q. Not one and a half hours every day?

A. No.

Q. Now in answer to this question, during this period of time, I think the question was, did the organization run off anyone who offered to participate in the picketing, your answer to that?

A. The answer was no.

Q. Did you observe, during the periods you were there, anyone in the picket line who was not participating in the activity, any strangers in the picket line?

A. I saw no stranger picketing.

Q. Did you see anybody offer to come and help picket while you were there?

[fol. 217] A. No.

The Court: Any further questions of Dr. Wimbish, if not you may step down.

Mr. Williams: We have several other witnesses—they would be cumulative. I would like to present to be included in the file the answer and defenses of the defendant corporation. I think it is proper to file the answer of defense.

The Court: This is a brief answer signed by counsel for the defendant NAACP adopting the answer hereinbefore filed on behalf of Ralph M. Wimbish and C. Bette Wimbish.

Mr. Bucklew: No objection.
The Court: Recorded—filed.

RULING ON MOTION FOR JUDGMENT

Mr. Minnis: To make a determination of the matter which counsel agreed on and as the Court will recall, as the Court directed put into the record, the basic points of their motion at this time the defendant moves for judgment for Bette Wimbish; the plaintiff's counsel concedes there was no meritorious case against her, for that reason we ask the Court to decide now on her.

The Court: Let the record show that by stipulation, at this point, of counsel and pursuant to motion of the defendant made at the conclusion of the plaintiff's testimony, this cause shall stand dismissed as against the defendant C. Bette Wimbish.

And this is all the evidence in this case.

(Judge's certificate to foregoing transcript omitted in printing.)

[fol. 219] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA
Chancery No. 57,341

WEBB CITY, INC., a Florida corporation, Plaintiff,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a non-profit New York corporation, authorized to do business in the State of Florida; RALPH M. WIMBISH and BETTE C. WIMBISH, his wife, et al., Defendants.

FINAL DECREE—May 3, 1961

This cause came on for hearing upon the application of the plaintiff for permanent injunction, the motions to strike

pleadings and to dismiss complaint and dissolve temporary restraining order on behalf of the defendants Ralph M. Wimbish and Bette C. Wimbish, and upon the motion to dismiss on behalf of the defendant National Association for the Advancement of Colored People, a non-profit New York corporation; whereupon the Court having considered the pictorial exhibits in evidence, the testimony of the witnesses and the able arguments of counsel for the respective parties, and being fully advised in the premises, finds as follows:

1. This Court has jurisdiction of the parties and of the subject matter of this cause.

The plaintiff is a Florida corporation privately owned and organized and doing a general mercantile business in the City of St. Petersburg, Pinellas County, Florida.

[fol. 220] 3. The defendant National Association for the Advancement of Colored People, commonly known as the NAACP, is a non-profit New York corporation authorized to operate in the State of Florida and having a local chapter in St. Petersburg, Florida, chartered by said corporation.

4. The defendant Ralph M. Wimbish is President of the St. Petersburg Chapter of the defendant corporation, and the defendant Bette C. Wimbish is the wife of the defendant Ralph M. Wimbish.

5. The plaintiff sought and this Court issued on December 6, 1960 a temporary restraining order restraining the defendants, all members of the St. Petersburg chapter of the NAACP, and all other persons acting in conjunction with the named defendants from committing any of the following acts:

(a) Displaying signs, posters or handbills requesting that members of the public not trade with plaintiff, either on the premises of the plaintiff or on the sidewalk immediately adjacent thereto.

(b) Picketing the premises of the plaintiff located at 128 Ninth Street South, St. Petersburg, Florida,

or interfering in any manner whatsoever with the free ingress and egress of the customers of the plaintiff at said place of business.

(c) Placing telephone calls to the place of business of the plaintiff, except for the purpose of transacting legitimate business with the plaintiff.

[fol. 221] (d) Threatening any employee of the plaintiff, or threatening any person providing transportation to any such employee from his residence to the place of business of the plaintiff.

6. The plaintiff alleges that the acts which have been enjoined were done with malicious intent to injure the business of the plaintiff and force the plaintiff to manage its business in a manner to suit the corporate defendant, and that said acts of the defendants were in fact injurious to the plaintiff's business. The plaintiff contends that such picketing is unlawful and subject to injunction in equity.

7. The defendants challenge the temporary injunction previously issued herein on the ground *inter alia* that injunction is not a proper remedy and insist that any permanent injunction in this cause would be violative of the defendants' rights as guaranteed by the 14th Amendment to the Constitution of the United States and by Sections 13 and 14 of the Declaration of Rights of the Constitution of the State of Florida. The defendants contend in effect that the picketing in this case was peaceful, as planned, and that peaceful picketing to impel compliance with the social and economic goals of the defendants is lawful and not subject to injunction.

8. On December 2, 1960 a named group of approximately thirty men and women identified with the defendants, other than Bette C. Wimbish, began picketing the premises of the plaintiff in St. Petersburg, Florida, carrying large placards reading as follows:

[fol. 222] "DON'T BUY WHERE YOU CANNOT WORK ON ANY JOB OR BE UPGRADED TO BETTER PAYING POSITIONS."

"BUY WITH FRIENDS: MERCHANTS WHO TREAT YOU WITH HUMAN DIGNITY."

"DON'T PAY TO BE SEGREGATED. DON'T BUY FOR CHRISTMAS. JOIN THE NAACP's SELECTIVE BUYING PROTEST."

"DON'T BUY WHERE YOU AREN'T WELCOME."

9. The defendants' picketing demonstration was planned and organized by the corporate defendant, acting through the Youth Counsel and the Selective Buying Committee of the St. Petersburg Chapter of the NAACP, with intent to disrupt and discourage trade with the plaintiff and in protest of the plaintiff's policies of lunch counter segregation and not having Negro employees more in proportion to the percentage of plaintiff's Negro trade and not employing Negroes in top administrative positions.

10. On December 2, 1960 the march of the picketers included an inside demonstration within the trading area of plaintiff's premises.

11. The corporate defendant and its agents who organized the demonstration did not limit participation in the picketing to members of their organization, but on the contrary invited participation in the demonstration by any interested citizens.

12. On December 6, 1960 one Jack Morrison, Jr. was arrested by the City Police of the City of St. Petersburg on a charge of unlawfully trespassing on the private property of the plaintiff, the evidence disclosing that said Jack Morrison, Jr., although not shown to be a member of the NAACP, was then and there an active participant in the demonstration, was obstructing an entrance to the plain-
[fol. 223] tiff's premises and in so doing had been standing upon the threshold of said entrance. Subsequently the said Jack Morrison, Jr. was convicted of offense against municipal law of the City of St. Petersburg.

13. The picketing demonstration resulted in a tense and inflammatory situation in and about the plaintiff's premises

which adversely affected the peace and tranquility of the community of St. Petersburg and created an atmosphere of apprehension and potential violence.

14. During the period from December 2 through December 6, 1960 the switchboard at the plaintiff's place of business was subjected to numerous telephone calls from undisclosed and unknown parties who used profane language directed toward the plaintiff and its employees.

15. The aforesaid picketing continued for the period of December 2, 3, 5 and 6, 1960 and, as a direct consequence thereof, the plaintiff suffered loss of revenue of not less than $10,000.00 below the reasonably expected revenue for each of said days. These losses represented substantial damage to plaintiff's private business not adequately remediable by action or actions at law.

16. The defendant, Bette C. Wimbish, took no active part in the organization of the demonstrations or in the demonstrations themselves and is therefore not a proper party in this cause.

The Court is mindful of the various rights and freedoms comprehended expressly or impliedly, within the protective provisions of the State and Federal Constitutions. Among these are freedom of speech and opinion and the right to [fol. 224] protest and to seek personal betterment. Such are the indisputable rights of these defendants and of all other citizens; but personal rights of this character are qualified rather than absolute because the law implicitly requires that individual rights be exercised with due regard for the rights of others who have the right to differ.

Under the most liberal judicial concept of our constitutional system of government there remain, and should remain, some areas in which private individuals and business establishments have the legal right to pursue distinctive policies not wholly acceptable to others, and to resort to the police power of the state for relief against noxious encroachments upon such right.

The right to protest the policies of lawful private interests such as plaintiff's may be exercised within proper limits, for example, through conventional modes of com-

munication or by withholding patronage; but coercive and destructive picketing may be enjoined by a court of equity where, as in this case, there is no adequate remedy at law for continuing and recurring damages.

This points up a well recognized reason for the extraordinary writ of injunction in equity. Law and order would be greatly disserved if restraint through courts of equity were not available in circumstances as disclosed by the record in this case. The only alternatives of the aggrieved party, other than to surrender his legal rights, would be to retaliate in kind or resort to repeated institution of separate proceedings with respect to similar offenses after their commission. Such multiplicity of actions in police courts and law tribunals would be unduly burdensome and [fol. 225] relatively ineffectual in curbing the unlawful transgressions. See *Miami Typographic Union #430* v. *Ormerod*, Fla. 61 So. (2d) 753.

As indicated in the above cited decision of the Supreme Court of Florida, as well as in decisions of the Supreme Court of the United States, even peaceful picketing is not necessarily equated with the constitutional guarantee of freedom of speech. It follows that where picketing is inflammatory and damaging in purpose and effect, as in the instant case, the actions of the defendants are unlawful and are not clothed with constitutional protection.

The defendants argue vindication of their picketing by pointing to the rectitude of their ultimate objectives, suggesting that the ends sought justify the means employed. This is a diversionary argument which begs the real question involved.

It Is Thereupon Ordered, Adjudged and Decreed as follows:

1. That the motion to dismiss made at the conclusion of the trial as to the defendant, Bette C. Wimbish, be and the same is hereby granted.

2. That all motions to dissolve the temporary restraining order be and the same are hereby denied.

3. That the motions to dismiss as to the defendants, National Association for the Advancement of Colored

People and Ralph M. Wimbish, be and the same are hereby denied.

[fol. 226] 4. That all motions to strike and to dismiss made preliminary to final hearing be and the same are hereby denied.

5. That the application of the plaintiff for permanent injunction, except as to Bette C. Wimbish, be and the same is hereby granted and as to all other defendants the temporary restraining order heretofore entered by this Court on December 6, 1960 is hereby continued in full force and effect and made a part of this final decree.

Done and Ordered in Chambers at Clearwater, Pinellas County, Florida, this 3rd day of May A. D. 1961.

Jack F. White, Circuit Judge.

[fol. 227] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

MOTION FOR ORDER RELEASING SURETY—Filed May 18, 1961

Comes now the plaintiff, by its undersigned attorneys, and moves the Court to enter an order releasing the surety on plaintiff's injunction bond; to-wit, the Maryland Casualty Company, and as grounds for this motion says:

1. That final decree has now been entered in favor of the plaintiff and the temporary restraining order previously entered has been finally adjudicated to be correct; and

2. No evidence presented at the final hearing in this cause indicated that the defendants, or any of them, had suffered or would suffer any financial loss by reason of the injunction in this cause.

George W. Phillips of Bucklew, Ramsey & Phillips, 403 Morgan Building, Tampa 2, Florida, Attorneys for Plaintiff.

Certificate of Service (omitted in printing).

[fol. 228] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

NOTICE OF HEARING—Filed May 22, 1961

To:

Mr. Robert L. Carter, 20 West 40th Street, New York 18, New York.

Mr. Frank H. White, 911 22nd Street North, St. Petersburg, Florida.

Messrs. Minnis and Williams, 624 22nd St. South, St. Petersburg, Florida.

You Will Please Take Notice that the plaintiff, by its undersigned attorneys, will call up for hearing its Motion to Tax Costs and Motion for Order Releasing Surety before the Honorable Jack F. White at the Court House in Clearwater, Florida, at 1:30 P. M., on Thursday, June 29, 1961.

Please govern yourselves accordingly.

Maynard Ramsey of Bucklew, Ramsey & Phillips, 403 Morgan Building, Tampa 2, Florida, Attorneys for Plaintiff.

Certificate of Service (omitted in printing).

[fol. 229] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

NOTICE OF APPEAL—Filed June 28, 1961

The Defendants, National Association for the Advancement of Colored People, and Ralph M. Wimbish, take and enter their appeal to the Supreme Court of the State of

Florida, to review the Final Decree of the Circuit Court for Pinellas County, bearing date of the 3rd day of May, 1961, recorded in O.R. 1162, page 627 on the 3rd day of May, 1961, and all parties to said cause are called upon to take notice of the entry of this appeal.

By Isaiah W. Williams, of Minnis and Williams.

Certificate of Service (omitted in printing).

[fol. 230]

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PINELLAS COUNTY

IN CHANCERY

No. 57,341-C

WEBB'S CITY, INC., a Florida corporation, Plaintiff,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, etc., et al., Defendants.

ORDER—July 5, 1961

This cause coming on to be heard upon Motion of the plaintiff, Webb's City, Inc., for the cancelling of bond and releasing of surety heretofore posted by the plaintiff in the above styled cause at the time of the issuance of the temporary injunction, and counsel for the respective parties being before the Court, and there being no objection to the entry of the Order on the bond, and the Court being fully advised in the premises, it is therefore

Ordered, Adjudged and Decreed that the bond heretofore posted on the 6th day of December 1960 by the plaintiff, Webb's City, Inc., and on which Maryland Casualty Company, a corporation, was the surety, be and the same is hereby cancelled and forever set aside and the surety thereon, Maryland Casualty Company, a corporation, be and the

same is hereby released from any further liability of any nature or kind whatsoever.

Done and Ordered in Chambers at Clearwater, Florida, this 5th day of July, 1961.

Jack F. White, Circuit Judge, Court of Appeal, Second District, as Circuit Judge.

[fol. 231] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

ASSIGNMENTS OF ERROR—Filed July 7, 1961

Come now the Defendants, National Association for the Advancement of Colored People and Ralph M. Wimbish, by and through their undersigned Attorneys and file herewith the following Assignments of Error in their behalf to be relied upon by them on the Appeal heretofore entered in captioned cause:

A. The Court erred in entering the Final Decree in favor of the Plaintiff on the 3rd day of May, 1961, and filed and entered on the same date, and recorded in O.R. 1162, Page 627 on the following grounds:

1. That the Plaintiff failed to produce any evidence of irreparable injury that would justify the issuance of a permanent injunction.

2. That the decision is manifestly contrary to law and the weight of the evidence.

3. That the Plaintiff failed to prove the gravamen of his complaint.

4. That the Plairtiff failed to substantiate grounds for equitable intervention.

[fol. 232] 5. That the issues involved in the cause were academic and moot and any available relief was at law rather than equity.

6. That the Plaintiff failed to show that his remedy at law was inadequate.

7. That the Bill of Complaint did not allege any facts showing, or tending to show, that a failure to grant the temporary or permanent injunction would work irreparable injury to the Plaintiff.

8. That the matters and facts set forth and alleged in the answers of the Defendants and substantiated at the trial defeated the equities of the Complaint.

B. That the Court erred in failing to direct a verdict for the Defendants at the close of the Plaintiff's case and at the conclusion of the Defendants' case.

C. That the granting of a permanent injunction is a violation of the Florida Constitution, Declaration of Rights, Sections 13 and 15 and of the United States Constitution, 1st and 14th amendments in that the acts enjoined constituted peaceful picketing and were legally justified and protected by the above constitutional safeguards.

D. That the Court erred in assessing costs against the Defendants.

Dated this 5th day of July, 1961.

By Isaiah W. Williams, Minnis and Williams, For Frank H. White, And For Robert L. Carter, Attorneys for the Defendants.

[fol. 233] Certificate of Service (omitted in printing).

[fol. 234] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

DIRECTIONS TO CLERK—Filed July 7, 1961

The Defendants National Association for the Advancement of Colored People, and Ralph M. Wimbish, by and through their undersigned Attorneys direct the clerk of the Circuit Court to compile the Record on Appeal in this cause as follows:

1. Prepare and transmit to the Florida Supreme Court, the entire record of captioned cause, without exception, including but not limited to, every paper, pleading and document filed in this cause, beginning with the original Complaint and ending with these Directions to Clerk, Assignments of Error and Designation To Reporter.

2. Include therein all testimony of witnesses taken at the trial of this cause before the Honorable Jack F. White, Circuit Judge, as reflected in the reporter's notes of the proceedings below.

3. Number the pages of the original record in consecutive order.

4. Fix a preface, including a complete index, giving, in chronological order, the date and filing of each paper, order, or instrument in the Circuit Court, the name and character of the instrument, and the page of the [fol. 235] record where same appears.

5. You are directed to prepare the record on appeal, consisting of the original documents above specified in accordance with the provisions of Rule 3.6 of the Florida Appellate Rules, including the Certificate of the Clerk under Seal of the Court, within the time required for the transfer of same to the State Supreme Court.

Dated this 5th day of July, 1961.

By Isaiah W. Williams, Of Minnis and Williams, And By Frank H. White, And By Robert L. Carter, General Counsel, National Association for the Advancement of Colored People, Attorneys For Defendants.

Certificate of Service (omitted in printing).

[fol. 236] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

DESIGNATIONS TO REPORTERS—Filed July 7, 1961

To: Reeves, Morey and Nicodemus, Official Court Reporters, Sixth Judicial Circuit.

Pursuant to Florida Appellate Rule 3.6 and in connection with a pending appeal, National Association for the Advancement of Colored People, and Ralph M. Wimbish, appellants in said appeal hereby designate the following portions of the proceedings taken and reported by you to be transcribed and certified to the Clerk for inclusion in the record on appeal within thirty (30) days from service of this designation or within the time and in the manner provided by the Florida Appellate Rules:

1. All testimony of witnesses given at the trial of this cause before the Honorable Jack F. White, Circuit Judge.

2. Transcribe all proceedings at the Final Hearing in this cause.

Dated this 5th day of July, 1961.

By Isaiah W. Williams, of Minnis and Williams and By Frank H. White and By Robert L. Carter.

[fol. 237] Certificate of Service (omitted in printing).

[fol. 238]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

Chancery No. 57,341

WEBB'S CITY, INC., a Florida corporation, Plaintiff,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, etc., et al., Defendants.

JUDGMENT FOR COSTS—Entered and Filed July 10, 1961

This cause has been duly heard upon motion of the plaintiff to tax costs against the defendants hereinafter named, whereupon the Court finds as follows:

1. That through inadvertence costs were not mentioned or adjudged in the final decree herein, but timely motion to tax costs has been made by the plaintiff and this judgment is entered pursuant to F. S. 58.04 (2).

2. That the following items appear to be properly assessable as costs against said defendants:

Filing fee	$ 15.00
Clerk (photostats)	38.10
Sheriff, Hillsborough County, Fla.	5.80
Sheriff, Pinellas County, Fla.	11.45
Thompson-Copeland (bond)	40.00
Court Reporter, original deposition of defendant, Dr. Wimbish	23.40
Witness fees	10.00
Court Reporter, attendance and original transcript of proceedings of March 8th trial	91.00
Total	$234.75

[fol. 239] It Is Therefore Ordered, Adjudged and Decreed that the plaintiff be and it is hereby awarded a judgment against the defendants Ralph M. Wimbish and the National Association for the Advancement of Colored People in the amount of $234.75 for which let execution issue.

Done and Ordered in Chambers in Clearwater, Pinellas County, Florida, this 10th day of July A. D. 1961.

Jack F. White, Judge, Second District Court of Appeal as Circuit Judge.

[fol. 240] [File endorsement omitted]

IN CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

[Title omitted]

ORDER ALLOWING INCORPORATION OF JUDGMENT FOR COSTS IN RECORD ON APPEAL—Filed July 24, 1961

This cause coming on this day to be heard upon Motion of the Defendants to Incorporate Judgment For Costs In Record on Appeal, and the Court having heard argument of Counsel for the respective parties, and the Court being otherwise fully advised in the premises, It is thereupon,

Ordered, Adjudged and Decreed that the Defendants' Motion be, and the same is hereby, granted.

It Is Further Ordered, Adjudged and Decreed that the Clerk of the Circuit Court is hereby directed to Incorporate the Judgment For Costs into the Record on Appeal.

Done and Ordered in Chambers at Clearwater, Florida, this 24 day of July, 1961.

Thomas (Illegible), Circuit Judge.

[fol. 241] Clerk's Certificate (omitted in printing).

[fol. 242]

IN THE SUPREME COURT OF FLORIDA

January Term, A. D. 1962

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, and RALPH M. WIMBISH, Appellants,

vs.

WEBB'S CITY, INC., Appellee.

ORDER TRANSFERRING CAUSE TO DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT—June 11, 1962

It appearing to the Court that the issues involved in the appeal in the above cause are matters within the jurisdiction of the District Court of Appeal of Florida, Second District, therefore, pursuant to the provisions of Florida Appellate Rules, it is ordered that said cause be transferred to said District Court for consideration and determination after five (5) days from this date provided, in the meantime, attorneys of record for the parties, or any of them shall bring to the attention of the Court that the cause is one which should be heard and determined by this Court.

[fol. 243]

IN THE SUPREME COURT OF FLORIDA

July Term, A. D. 1962

Case No. 31,701

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, and RALPH M. WIMBISH, Appellants,

vs.

WEBB'S CITY, INC., a Florida Corporation, Appellee.

ORDER OVERRULING OBJECTIONS TO TRANSFER AND TRANSFERRING CAUSE TO DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT—September 25, 1962

June 11, 1962, this Court entered an order in the above cause transferring the cause to the District Court of Appeal of Florida, Second District, for lack of jurisdiction in this Court to dispose of the cause and the order stated that it would be transferred in five (5) days thereafter unless in the meantime, attorneys for the parties, or any of them should bring to the attention of the Court that the cause is one which should be heard and determined by this Court. Thereafter, on June 16, 1962, the attorneys for the appellants filed objections to said transfer and brief in support of the contention that the Supreme Court has jurisdiction of the cause, and upon consideration thereof, it is ordered that the objections to said transfer be and are hereby overruled, and the Clerk of this Court is directed to transfer this cause forthwith to the District Court of Appeal, Second District.

[fol. 244]

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

SECOND DISTRICT

January Term, A. D. 1963

Case No. 3609

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a non-profit New York corporation authorized to do business in the State of Florida; RALPH M. WIMBISH and BETTE C. WIMBISH, his wife, et al., Appellants,

v.

WEBB'S CITY, INC., a Florida corporation, Appellee.

Appeal from the Circuit Court for Pinellas County; Jack F. White, Judge.

Minnis & Williams; Frank H. White, St. Petersburg; and Robert L. Carter, New York, for Appellants.

Bucklew, Ramsey & Phillips, Tampa, for Appellee.

OPINION—Filed April 17, 1963

Barns, Paul D., Associate Judge.

The appellee, Webb's City, Inc., brought a suit in equity seeking an injunction against the appellants, National Association for the Advancement of Colored People, (hereinafter referred to as NAACP), and Ralph M. Wimbish for interference with the business of the Webb's City by picketing its place of business and inducing a customer [fol. 245] boycott. At final hearing a permanent injunction was entered against the defendants whereupon they brought this appeal. We fail to find error and affirm.

The Chancellor's findings of fact and final decree is as follows:

Chancellor's Findings of Fact and Final Decree

"1. This Court has jurisdiction of the parties and of the subject matter of this cause.

"2. The plaintiff is a Florida corporation privately owned and organized and doing a general mercantile business in the City of St. Petersburg, Pinellas County, Florida.

"3. The defendant National Association for the Advancement of Colored People, commonly known as the NAACP, is a non-profit New York corporation authorized to operate in the State of Florida and having a local chapter in St. Petersburg, Florida, chartered by said corporation.

"4. The defendant Ralph M. Wimbish is President of the St. Petersburg Chapter of the defendant corporation, and the defendant Bette C. Wimbish is the wife of the defendant Ralph M. Wimbish.

"5. The plaintiff sought and this Court issued on December 6, 1960 a temporary restraining order restraining the defendants, all members of the St. Petersburg chapter of the NAACP, and all other persons acting in conjunction with the named defendants from committing any of the following acts:

"(a) Displaying signs, posters or handbills requesting that members of the public not trade with the plaintiff, either on the premises of the plaintiff or on the sidewalk immediately adjacent thereto.

[fol. 246] "(b) Picketing the premises of the plaintiff located at 128 Ninth Street South, St. Petersburg, Florida, or interfering in any manner whatsoever with the free ingress and egress of the customers of the plaintiff at said place of business.

"(c) Placing telephone calls to the place of business of the plaintiff, except for the purpose of transacting legitimate business with the plaintiff.

"(d) Threatening any employee of the plaintiff, or threatening any person providing transportation to any

such employee from his residence to the place of business of the plaintiff.

"6. The plaintiff alleges that the acts which have been enjoined were done with malicious intent to injure the business of the plaintiff and force the plaintiff to manage its business in a manner to suit the corporate defendant, and that said acts of the defendants were in fact injurious to the plaintiff's business. The plaintiff contends that such picketing is unlawful and subject to injunction in equity.

"7. The defendants challenge the temporary injunction previously issued herein on the ground *inter alia* that injunction is not a proper remedy and insist that any permanent injunction in this cause would be violative of the defendants' rights as guaranteed by the 14th amendment to the Constitution of the United States and by Sections 13 and 14 of the Declaration of Rights of the Constitution of the State of Florida. The defendants contend in effect that the picketing in this case was peaceful, as planned, and that peaceful picketing to impel compliance with the social and economic goals of the defendants is lawful and not subject to injunction.

"8. On December 2, 1960 a named group of approxi- [fol. 247] mately thirty men and women identified with the defendants, other than Bette C. Wimbish, began picketing the premises of the plaintiff in St. Petersburg, Florida, carrying large placards reading as follows:

"DON'T BUY WHERE YOU CANNOT WORK ON ANY JOB OR BE UPGRADED TO BETTER PAYING POSITIONS."

"BUY WITH FRIENDS: MERCHANTS WHO TREAT YOU WITH HUMAN DIGNITY."

"DON'T PAY TO BE SEGRATED (sic). DON'T BUY FOR CHRISTMAS. JOIN THE NAACP'S SELECTIVE BUYING PROTEST."

"DON'T BUY WHERE YOU AREN'T WELCOME."

"9. The defendants' picketing demonstration was planned and organized by the corporate defendant, acting through

the Youth Counsel and the Selective Buying Committee of the St. Petersburg Chapter of the NAACP, with the intent to disrupt and discourage trade with the plaintiff and in protest of the plaintiff's policies of lunch counter segregation and not having Negro employees more in proportion to the percentage of plaintiff's Negro trade and not employing Negroes in top administrative positions.

"10. On December 2, 1960 the march of the picketers included an inside demonstration within the trading area of plaintiff's premises.

"11. The corporate defendant and its agents who organized the demonstration did not limit participation in the picketing to members of their organization, but on the contrary invited participation in the demonstration by any interested citizens.

"12. On December 6, 1960 one Jack Morrison, Jr., was arrested by the City Police of the City of St. Petersburg on a charge of unlawfully trespassing on the private property of the plaintiff, the evidence disclosing that said Jack [fol. 248] Morrison, Jr., although not shown to be a member of the NAACP, was then and there an active participant in the demonstration, was obstructing an entrance to the plaintiff's premises and in so doing had been standing upon the threshold of said entrance. Subsequently the said Jack Morrison, Jr., was convicted of offense against municipal law of the City of St. Petersburg.

"13. The picketing demonstration resulted in a tense and inflammatory situation in and about the plaintiff's premises which adversely affected the peace and tranquility of the community of St. Petersburg and created an atmosphere of apprehension and potential violence.

"14. During the period from December 2 through December 6, 1960 the switchboard at the plaintiff's place of business was subjected to numerous telephone calls from undisclosed and unknown parties who used profane language directed toward the plaintiff and its employees.

"15. The aforesaid picketing continued for the period of December 2, 3, 5 and 6, 1960 and, as a direct consequence

thereof, the plaintiff suffered loss of revenue of not less than $10,000.00 below the reasonably expected revenue for each of said days. These losses represented substantial damage to plaintiff's private business not adequately remediable by action or actions at law.

" • • •

"The Court is mindful of the various rights and freedoms comprehended, expressly or impliedly, within the protective provisions of the State and Federal Constitutions. Among these are freedom of speech and opinion and the right to protest and to seek personal betterment. Such are the indisputable rights of these defendants and of all [fol. 249] other citizens; but personal rights of this character are qualified rather than absolute because the law implicitly requires that individual rights be exercised with due regard for the rights of others who have the right to differ.

"Under the most liberal judicial concept of our constitutional system of government there remain, and should remain, some areas in which private individuals and business establishments have the legal right to pursue distinctive policies not wholly acceptable to others, and to resort to the police power of the state for relief against noxious encroachments upon such right.

"The right to protest the policies of lawful private interests such as plaintiff's may be exercised within proper limits, for example, through conventional modes of communication or by withholding patronage; but coercive and destructive picketing may be enjoined by a court of equity where, as in this case, there is no adequate remedy at law for continuing and recurring damages.

"This points up a well recognized reason for the extraordinary writ of injunction in equity. Law and order would be greatly disserved if restraint through courts of equity were not available in circumstances as disclosed by the record in this case. The only alternative of the aggrieved party, other than to surrender his legal rights, would be to retaliate in kind or resort to repeated institution of separate proceedings with respect to similar offenses after their commission. Such multiplicity of actions in police courts and law tribunals would be unduly burdensome and rela-

tively ineffectual in curbing the unlawful transgressions. *See Miami Typographic Union #430* v. *Ormerod,* Fla. 61 So. (2d) 753.

"As indicated in the above cited decision of the Supreme [fol. 250] Court of Florida, as well as in decisions of the Supreme Court of the United States, even peaceful picketing is not necessarily equated with the constitutional guarantee of freedom of speech. It follows that where picketing is inflammatory and damaging in purpose and effect, as in the instant case, the actions of the defendants are unlawful and are not clothed with constitutional protection.

"The defendants argue vindication of their picketing by pointing to the rectitude of their ultimate objectives, suggesting that the ends sought justify the means employed. This is a diversionary argument which begs the real question involved.

"It Is Thereupon Ordered, Adjudged and Decreed as follows:

"1. That the motion to dismiss made at the conclusion of the trial as to the defendant, Bette C. Wimbish, be and the same is hereby granted.

"2. That all motions to dissolve the temporary restraining order be and the same are hereby denied.

"3. That the motions to dismiss as to the defendants, National Association for the Advancement of Colored People and Ralph M. Wimbish, be and the same are hereby denied.

"4. That all motions to strike and to dismiss made preliminary to final hearing be and the same are hereby denied.

"5. That the application of the plaintiff for permanent injunction, except as to Bette C. Wimbish, be and the same is hereby granted and as to all other defendants the temporary restraining order heretofore entered by this Court on December 6, 1960 is hereby continued in full force and effect and made a part of this final decree."

[fol. 251] *Is a boycott promoted by picketing to advance the interest of a particular racial or social group, other than labor organization or professional association, valid?* This

is a racial or social question and the rules of law applicable to labor disputes have no application here.

One's business, aside from the investment of money and tangible property employed therein, is in every sense of the word property, and, as such, if lawful, entitled to protection from all unlawful interference. 15 C.J.S., §12, 1014, citing Traux v. Corrigan (per Justice Taft) 257 US 312, 42 S Ct 124, 66 L ed 254.

The primary purpose of the picketing was to interfere with Webb's right to an unhampered market for the sale of its commodities and services by coercing customers or prospective customers into withholding patronage and thereby to cause injury to Webb's business; its purpose was to injure by inducing a customer boycott, and it did.

We are not dealing with the rights of the defendants to use concerted action in appealing to others to cease to patronize Webb's City, but to the contrary, we are dealing with the question as to whether or not such an appeal may be made by coercive picketing. As stated in Hughes v. Superior Court, 339 US 460, 70 S Ct 718, 94 L ed 985:

> "[T]he domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states,' *Palko* v. *Connecticut*, 302 U.S. 319, 327, no doubt includes liberty of thought and appropriate means for expressing it. But while picketing is a mode of communication it is inseparably something more and different. Industrial picketing 'is more than free speech, since it involves patrol of a particular locality and since the very [fol. 252] presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated.' Mr. Justice Douglas, joined by Black and Murphy, JJ., concurring in *Bakery & Pastry Drivers & Helpers Local* v. *Wohl*, 315 U. S. 768, 775, 776. Publication in a newspaper, or by distribution of circulars, may convey the same information or make the same information or make the same charge as do those patrolling a picket line. But the very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication. The loyalties and re-

sponses evoked and exacted by picket lines are unlike those flowing from appeals by printed word."

The defendants had a right to buy where they please and by concerted action to cease patronizing Webb's when they considered it to their interest to do so; and in turn Webb's City had a right not to sell. As stated in Cooley in Torts 278: "It is a part of man's legal rights . . . that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rest upon reason, or is the result of whim, caprice, prejudice, or malice."

When considering the plaintiff's interest in its commercial expectancies from its business weighed against the defendants' interest in advancing their social objectives and the injury occasioned by the defendants' coercive picketing causing plaintiff's customers and prospective customers not to enter into or continue business relations with the plaintiff, it appears that the Chancellor has not erred. Green v. Samuelson, 168 Md. 421, 178 A 109, 99 ALR 528; A. S. Beck Shoe Corp. v. Johnson; 153 Misc 363, 274 N.Y.S. 946; Restatement, Torts, §766; 48 Harvard Law Rev. 691, 56 Harvard Law Review 180, 513, 532 and 484 (text 486).

Affirmed.

Shannon, C.J., and Smith, J., Concur.

[fol. 253] CERTIFICATE OF CLERK (omitted in printing).

[fol. 254]

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MANDATE

From

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

To the Honorable, the Judges of the Circuit Court for the Sixth Judicial Circuit of Florida. Greeting:

Ch. 57,341

Whereas, Lately in the Circuit Court of the Sixth Judicial Circuit for the County of Pinellas in a cause wherein

WEBB CITY, INC., a Florida corporation,

was plaintiff

and

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, et al,

were defendants

(No. 84566A)

the Decree of said Circuit Court was rendered May 3, 1961 as by the inspection of the transcript of the record of the said Circuit Court which was brought into the District Court of Appeal of Florida, Second District, by virtue of an Appeal agreeably to the laws of said State in such case made and provided, fully and at large appears:

And Whereas, at the January Term of said District Court holden at Lakeland A. D. 1963, the said cause came on to be heard before the said District Court on the said transcript of the record and was argued by counsel; in consideration whereof, on the 17th day April A. D. 1963 the said District Court rendered its opinion and judgment in said cause as per copy thereof hereto attached and made a part hereof.

In Consideration Whereof, It is Ordered by the Court that the Appellee do have and recover of and from the Appellants costs in this behalf expended herein except the filing fee of $25.00 which has been paid by the Appellants and that all costs shall be taxed in the court in which the appeal was entered, therefore,

You Are Hereby Commanded, That such further proceedings be had in said cause as according to right, justice, the judgment of said Court, and the laws of the State of Florida, ought to be had, the said Decree of the Circuit Court notwithstanding.

Witness, The Honorable Geo. T. Shannon Chief Justice of said District Court, and the seal of said Court at Lakeland, this 7th day of May 1963.

Joseph E. Gillen, Clerk District Court of Appeal of Florida, Second District.

(Seal)

(Stamp—Filed May 8, [illegible], Avery W. Gilkerson, Clerk Circuit Court.)

[fol. 255] Clerk's Certificate (omitted in printing).

[fol. 256]

Supreme Court of the United States

[Title omitted]

Order Extending Time to File Petition for Writ of Certiorari—July 12, 1963

Upon Consideration of the application of counsel for petitioner(s),

It is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 14th, 1963.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

[fol. 257]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—December 9, 1963.

The petition herein for a writ of certiorari to the District Court of Appeal of the State of Florida, Second District is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

LIBRARY
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AUG 12 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1963

No. 362

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation, *et al.*, *Petitioners*,

v.

WEBB'S CITY, INC., a Corporation.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

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IN THE

Supreme Court of the United States

October Term, 1963

No.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation, *et al.*,

Petitioners,

v.

WEBB'S CITY, INC., a Corporation.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Petitioner prays that a writ of certiorari issue to review the judgment of the District Court of Appeal of Florida, Second District, entered on April 17, 1963, in the above-entitled cause.

Opinion Below

The opinion of the District Court of Appeal of Florida, Second District, is reported at 152 So. 2d 179 (1963), and is printed as Appendix A, *infra* at page 1a. The order of the Supreme Court of Florida rejecting jurisdiction of the cause and transferring it from the Supreme Court of Florida to the District Court of Appeal of Florida, Second District, entered on September 25, 1962, is printed in Appendix B, *infra* at page 9a. The opinion of the Circuit Court of the Sixth Judicial Circuit of Florida in and for Pinellas County entered on May 31, 1961, enjoining petitioners from picketing the respondent business premises, is printed at Appendix C, *infra* at page 11a.

Jurisdiction

The final judgment of the Florida District Court of Appeal, Second District was entered on April 17, 1963 (R. 95-104). Said court has final appellate jurisdiction of the cause under Article V, Section 4(2) of the Florida Constitution. Neither further appeal nor certiorari to the Florida Supreme Court is permitted under Article V, Section 4(2) of the Florida Constitution and Florida Appellate Rules 2.1a(5) and 4.5c(6), nor is any other method of full review by a higher state court provided. Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257(3), petitioner having asserted in the courts below rights, privileges and immunities conferred by the Constitution and laws of the United States.

Question Presented

Whether petitioners, whose basic purpose is the elimination of racial discrimination throughout the United States by lawful means, have been deprived of freedom of speech and assembly, due process and equal protection of the laws guaranteed in the First and Fourteenth Amendments to the Constitution of the United States by an injunction preventing them from communicating their views on racial discrimination in a department store cafeteria, through the method of peaceful picketing, merely because they are not a labor organization?

Statement

The respondent in this case, Webb's City, is a corporation which operates a department store and other commercial facilities within the city of St. Petersburg, Fla. As part of its commercial enterprises, it maintains a lunch counter and cafeteria from which Negroes were excluded,

prior to the events which gave rise to this controversy, although Negro customers are welcomed in all phases of the Webb's City operation.

Petitioners are the St. Petersburg Branch of the National Association for the Advancement of Colored People and Dr. Ralph M. Wimbish, its president. On December 2, 1962, and for the next four days, pickets from the St. Petersburg Branch of the National Association for the Advancement of Colored People carried placards outside of Webb's City, urging the public not to patronize the store because of its undemocratic refusal to serve Negroes in its cafeteria (R. 68, T. 58, 62).[1]

On December 7, 1960, respondent filed its complaint in this cause, requesting a temporary and permanent injunction on the grounds that the acts of petitioners constituted a malicious and unlawful interference with the business of the respondent. The respondent alleged that its business had been damaged in that its receipts from gross sales on each business day of the picketing were approximately $15,000.00 below the reasonably expected revenue, and contended that it was being irrevocably damaged and had no adequate remedy at law (R. 1-4). Respondent obtained a temporary restraining order in the Circuit Court of the 6th Judicial Circuit in and for Pinellas County, Florida, preventing petitioners from picketing the premises of the respondent, and from displaying signs requesting that members of the public not trade with the respondent (R. 5-6).

On December 23, 1963, petitioner Dr. Ralph M. Wimbish moved to dissolve the temporary restraining order and filed his answer and defenses to this action (R. 20-21, 23-25). On December 27, 1960, petitioner the National Association for the Advancement of Colored People moved to dismiss the

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[1] The record of the trial in the Circuit Court of the 6th Judicial Circuit of Florida was given the single page number 68; therefore citations will be to R. (Record) 68, T. (Transcript).

complaint (R. 26). On March 8, 1961, petitioner National Association for the Advancement of Colored People entered its answer and defenses to respondent's complaint (R. 44-45).

On March 8, 1961, hearing on petitioners' motions and trial of the issues was held in the Circuit Court of the 6th Judicial Circuit in Clearwater, Florida (R. 68, T. 1-111). The evidence showed that petitioner Dr. Wimbish organized the demonstration after negotiations with the store had failed (R. 68, T. 65), in order to acquaint the public with the fact that Webb's City discriminated against Negroes in respect to service at its cafeteria (R. 62). The pickets were instructed not to interfere with anyone, to walk close to the edge of the sidewalk so that the public could pass on the street, and to keep 15 feet apart (R. 68, T. 74).

J. E. Webb, president of the respondent Webb's City, testified that he observed no violence or personal interference with customers during the picketing (R. 68, T. 17, 22). This was confirmed by other witnesses (R. 68, T. 64, 76, 90, 95). Webb also testified that the pickets had once entered the store, but had left as soon as they were asked to do so by store executives (R. 68, T. 20). Other witnesses testified that they did not observe the pickets entering the store at any time (R. 68, T. 70, 78, 104).

There was testimony that an employee emerging from Webb's City with parcels had been told by a picket that there were no cabs available, and had then gotten a ride in the automobile of another employee (R. 68, T. 53); there appeared to be no relevance in these facts. Witnesses also testified that harassing anonymous telephone calls were received by respondent (R. 68, T. 55); it was affirmatively shown that petitioners had made no such calls (R. 68, T. 67, 76, 96, 104-105).

Evidence was presented that one man marching with the pickets was arrested for obstructing a doorway (R. 68,

T. 40, 43). It was shown that this man had no connection with the petitioners (R. 68, T. 70, 76), nor was any legal action taken by petitioners on his behalf (R. 68, T. 106).

Witnesses indicated that the picketing was at all times peaceful, and that the pickets had followed instructions as to the proper method of informing the public of the discrimination (R. 68, T. 75).

Respondent then introduced evidence that its receipts for one of the days where picketing took place had dropped $11,660.00 compared with the same day the preceding year and that there had been a drop in its receipts since the commencement of the picketing (R. 68, T. 30-32). Petitioners showed that a comparison between a day preceding the picketing and the same day the previous year, also evidenced a drop in receipts (R. 68, T. 32).

On May 3, 1961, the Circuit Court of the Sixth Judicial Circuit of the State of Florida in and for Pinellas County rendered its decision, issuing a permanent injunction restraining petitioners from displaying signs on the sidewalk near respondent's business requesting that the public not trade with respondent, or picketing the premises (R. 69-76).

On June 28, 1961, petitioners filed their notice of appeal to the Supreme Court of Florida (R. 80), and on July 7, 1961, filed their assignments of error, contending that the granting of the injunction violated the Florida Constitution, Declaration of Rights, Sections 13 and 15, and the First and Fourteenth Amendments to the Constitution of the United States in that the acts enjoined constituted peaceful picketing and were legally justified and protected by the above constitutional safeguards (R. 82-84). Petitioners also filed on July 7 their directions to the clerk and designations to reporters (R. 85-88).

On May 17, 1961, respondent moved to tax costs against petitioners and to release respondent's surety; the motion was granted on July 10, 1961 (R. 89-90). On July 13, 1961,

petitioners moved to incorporate judgment for costs into the record on appeal because the judgment for costs was filed subsequent to the expiration of the appeal period; the motion was granted on July 24, 1961 (R. 91).

On May 8, 1962, the appeal was argued in the Supreme Court of Florida. On June 11, 1962, that Court ordered the cause transferred to the District Court of Appeal of Florida, Second District, within five days, unless the parties "shall bring to the attention of the court that the cause is one which should be heard and determined by this Court" (R. 93). On June 16, 1962, the petitioners filed objections to the transfer and a brief in support of the jurisdiction of the Supreme Court of Florida (R. 94). On September 25, 1962, the Supreme Court of Florida entered an order transferring the cause to the District of Florida, Second District, on the grounds that the Supreme Court of Florida had no jurisdiction over the cause (R. 94). The court rejected the argument that the decision below had construed a controlling provision of the Florida or federal Constitutions.

On April 17, 1963, the District Court of Appeal of Florida, Second District, entered its opinion affirming the judgment of the Circuit Court enjoining petitioners from peaceful picketing of the respondent department store (R. 95-104), on the grounds that the picketing was "coercive" because it injured the business of a commercial enterprise (R. 103).

Since there are no grounds for appealing the District Court's affirmance to the Supreme Court of Florida other than those already rejected by the Supreme Court of Florida, the judgment of the District Court is a final judgment within the meaning of Title 28, United States Code, Sec. 1257. Petitioner brings the cause here, seeking a review by this Court of the judgment and decree of the District Court of Appeal of Florida, Second District.

Because of a delay in preparing the record, this Court through Justice Hugo L. Black granted an order extending petitioners' time to file this petition until August 14, 1963.

Reasons for Allowance of Writ

1. The decision below, by seeking to sustain an injunction against peaceful picketing because the purpose was to advance a social goal rather than to influence the outcome of a labor dispute, is in conflict with the *ratio decedendi* in *NAACP* v. *Button*, 371 U. S. 415; *Bates* v. *Little Rock*, 361 U. S. 516; *NAACP* v. *Alabama*, 357 U. S. 449; *NAACP* v. *Louisiana*, 366 U. S. 293; *Lombard* v. *Louisiana*, 373 U. S. 267, and *Peterson* v. *Greenville*, 373 U. S. 244. This Court has made clear in these decisions that all forms of peaceful protest are protected by the Fourteenth Amendment against state intrusion. No state may, without a subordinating state interest, take steps which deter the exercise of freedom of association and group advocacy of ideas and beliefs, whether through its judiciary or other governmental branches. *Shelly* v. *Kraemer*, 334 U. S. 1, 14; *Missouri* v. *Dockery*, 191 U. S. 165, 170-171. As was said in *NAACP* v. *Alabama*, *supra*, at pps. 460-461:

> Of course it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.

Political and social beliefs may be disseminated not only through speech but also through other forms of orderly group activity. This Court ruled in *NAACP* v. *Button*, *supra*, at page 429:

> . . . [A]bstract discussion is not the only species of communication which the Constitution protects; the First Amendment also protects vigorous advo-

> cacy, certainly of lawful ends, against governmental intrusion. *Thomas* v. *Collins*, 323 U. S. 516, 537; *Herndon* v. *Lowry*, 301 U. S. 242, 259-264. Cf. *Cantwell* v. *Conn.*, 310 U. S. 296; *Stromberg* v. *California*, 283 U. S. 359, 369; *Terminiello* v. *Chicago*, 337 U. S. 1, 4.

That the objective of "equality of treatment by all government, federal, state and local, for the members of the Negro community in this country" is lawful, is no longer open to question. *NAACP* v. *Button*, *supra*, at page 429. If a group formed to secure such equality pickets peacefully in order to present its position to the public and to urge public support, it is as justified in its conduct as a labor union which pickets for the same reason. As was said in *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552, at p. 561:

> . . . [T]he removal of discrimination against them by reason of their race or religious beliefs is quite as important to those concerned as fairness and equity in terms and conditions of employment can be to trade or craft unions or any form of labor organization or association. Race discrimination by an employer may reasonably be deemed more unfair and less excusable than discrimination against workers on the ground of union affiliation.

Catholic, Jewish, Negro and other groups have picketed motion picture theatres and other establishments, and such picketing was held to be an unquestioned privilege. In *Ex Parte Lyons*, 81 P. 2d 190 (1938), where pickets sought to protest against stores remaining open on Sundays, the court pointed out at page 193:

> In this state the right to peacefully picket rests upon the constitutional guaranty of the right of free speech. We cannot see how the right to peacefully picket, under the guaranty of free speech, could be confined to cases in which there exists a dispute between an employer and organized labor over hours or conditions of employment, rates of

> pay, unionization of employees or employment of non-union men and not extended to a dispute between a business man and any citizen or group of citizens who may differ with him on a question of business policy. The guaranty of the right of freedom of speech is general and extends to every class or group of citizens. As that guaranty is not confined to labor organizations, decisions in those cases announcing the principles upon which the right rests in the cases involving the ordinary labor dispute are important and controlling here.

See in accord, *Rosman* v. *United Strictly Kosher Butchers*, 298 N. Y. S. 343 (1937).

Racial discrimination, like a labor controversy, is not only a matter of private concern but also a matter affecting the public, which has an interest in the welfare of all those who compose its body. The presence of a disadvantaged group in a society has a detrimental effect on the society as a whole, whether the disadvantage stems from economic reasons or from the accidental factor of skin color. As pointed out in 83 Univ. of Pa. L. Rev. 383, 384 (1935):

> The essential purpose behind the liberal attitude toward labor would seem to be the advisability of raising living standards and ultimately reducing the sociological and economic burdens upon the community as a whole which accompany the subjugation of any large group therein. The economic progress of the Negro race should, for this same reason, be a proper subject of community concern.

Where racial discrimination exists, the harm is not only economic but also moral and social. Unless the Negro is judged as an individual instead of being prejudged, he cannot attain the respect and dignity so vital to full participation in the mainstream of American life.

The only cases cited by the court below to support its theory that Negroes do not have the same right as members of a labor union to picket peacefully are *Green* v. *Samuel-*

son, 168 Md. 421 (1935) and *A. S. Beck Shoe Corp. v. Johnson*, 274 N. Y. S. 946 (1934). In the latter case, the court considered the fact that the picketing led to violence. The facts in both cases were entirely different from the instant case, since they involved attempts to induce an employer to hire a certain quota of Negro employees. As such, they fall under the rule of *Hughes* v. *Superior Court*, 339 U. S. 460, which held that a quota system is in essence a discrimination based on race, and that an attempt to secure such a system would evidence an unlawful purpose. However, this Court pointed out at page 466: "The California Supreme Court suggested a distinction between picketing to promote discrimination, as here, and picketing against discrimination." The California court assumed without deciding that ". . . if such discrimination exists, picketing to protest it would not be for an unlawful objective". *Hughes* v. *Superior Court*, 798 P. 2d at 888 (1948). The instant case clearly involves picketing against discrimination. The petitioners were seeking no special privileges or favored treatment. They wished merely to be permitted to eat in the cafeteria like respondent's other customers, since they were welcomed as buyers in all other parts of the store (R. 68, T. 11-12).

If this decision is allowed to stand, it would establish a precedent that no one may picket to publish the fact of racial discrimination. This question is one of the gravest public importance. As the court said in *Julie Baking Co.* v. *Graymond*, 274 N. Y. S. 250, 251 (1934):

> I conceive it clear in reason and principle that picketing not accompanied 'by violence, threats or intimidation express or implied,' and having a lawful purpose, should not be enjoined . . .
>
> The right of an individual or group of individuals to protest in a peaceable manner against injustice or oppression, actual or merely fancied, is one to be cherished and not to be proscribed in any well-ordered society. It is an essential prerequisite of free men living under democratic institutions.

It cannot be denied that at present in America, a struggle is taking place between those who wish to preserve special privileges for the white race which are denied to other races, a' ' those who believe in the importance of equal treatmen. and equal opportunity for all races. Because the only proper way for the goal of equal treatment to be achieved in a free society is by peaceful means, it is incumbent that peaceful avenues not be closed.

2. The decisions of this Court have established that picketing for a lawful purpose cannot be enjoined unless it is accompanied by violence, threats, or intimidation. *Drivers Union* v. *Meadowmoor Dairies*, 312 U. S. 287; *Cafeteria Union* v. *Angelos*, 320 U. S. 293; *Teamsters Union* v. *Vogt*, 354 U. S. 284; *Thornhill* v. *Alabama*, 310 U. S. 86. The court below seeks to define petitioners' conduct as "coercive" because their attempt to enlist public support for their position was through the medium of picketing which allegedly resulted in a loss of profits by respondent. However, "coerciveness" refers to the conduct of picketing and not the result. A loss of profits, even if proven, would not render the picketing unlawful. A member of the public cannot be deprived of the right to refuse to purchase goods or to attempt to persuade others not to purchase goods from persons with whom he is not in competition. *Apex Hosiery* v. *Leader*, 310 U. S. 469; *Rice* v. *Asheville Ice Co.*, 169 S. E. 707 (1933); *Dallas General Drivers* v. *Wamix, Inc.*, 295 S. W. 2d 873 (1956); *Lineberger* v. *Colonial Ice Co.*, 17 S. E. 2d 502 (1941).

The record in this case shows that the picketing was at all times peaceful. The pickets marched 15 feet apart and did not interfere with respondent's customers in any way (R. 68, T. 74). Incidents which respondent brought into the record, such as the receipt of anonymous telephone calls (R. 68, T. 55) and the arrest of a man who had marched with the pickets but was unknown to them (R. 68, T. 70, 76), had no relation to petitioners' activities. Indeed, both

the respondent's president and the police officer who was on the scene during the picketing testified that there was no violence (R. 68, T. 22, 49). The fact that peaceful picketing may be inconvenient or annoying to someone in no way outweighs the importance of the right. *People* v. *Kiernan*, 26 N. Y. S. 2d 291 (1940); *People* v. *Barkal*, 36 N. Y. S. 2d 1011 (1942).

Respondent argues that a picket line has an influence different from that flowing from appeals only by the printed word. *Hughes* v. *Superior Court, supra.* However, this Court has held that the effect of picketing is only unlawful when it goes beyond the mere influence exerted by the fact of picketing itself. *Cafeteria Union* v. *Angelos, supra*, at 295.

Florida law also indicates that picketing can be enjoined only when it is not peaceful. Laws of Florida 1943, c-21968, Section 9 (Fla. Stat. Ann., Section 447.09) specifies:

> It shall be unlawful for any person: . . . 13) To engage in picketing by force and violence, or to picket in such a manner as to prevent ingress and egress to and from any premises, or to picket other than in a reasonable and peaceful manner.

And in the case of *International Ladies Garment Workers Union, Local Chapter No. 415* v. *Sherry Manufacturers Co.*, 115 So. 2d 27, 29 (1959), the court reversed a judgment granting an injunction, ruling:

> Since the testimony failed to disclose any acts of violence in connection with the picketing, the effect of the chancellor's order was to enjoin peaceful picketing. Therefore, under this Court's opinion in *Amalgamated Clothing Workers of America, Local 694, CIO-AFL* v. *Donald S. LaVigne, Inc.*, Fla. App. 1958, 111 So. 2d 462, that portion of the chancellor's order enjoining picketing was error and is hereby reversed.

In the instant case, the court below has no basis upon which to prohibit petitioners from exercising their rights of freedom of speech, association and assembly guaranteed by the Fourteenth Amendment of the Constitution of the United States. *Bates* v. *Little Rock, supra*, pages 522-523. This Court has ruled that ". . . a State cannot foreclose the exercise of constitutional rights by mere labels." *NAACP* v. *Button, supra*, at page 429.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Opinion of the District Court of Appeal of Florida, Second District

April 17, 1962

BARNS, PAUL D., *Associate Judge.*

The appellee, Webb's City, Inc., brought a suit in equity seeking an injunction against the appellants, National Association for the Advancement of Colored People, (hereinafter referred to as NAACP), and Ralph M. Wimbish for interference with the business of the Webb's City by picketing its place of business and inducing a customer boycott. At final hearing a permanent injunction was entered against the defendants whereupon they brought this appeal. We fail to find error and affirm.

The Chancellor's findings of fact and final decree is as follows:

CHANCELLOR'S FINDINGS OF FACT AND FINAL DECREE

"1. This Court has jurisdiction of the parties and of the subject matter of this cause.

"2. The plaintiff is a Florida corporation privately owned and organized and doing a general mercantile business in the City of St. Petersburg, Pinellas County, Florida.

"3. The defendant National Association for the Advancement of Colored People, commonly known as the NAACP, is a non-profit New York corporation authorized to operate in the State of Florida and having a local chapter in St. Petersburg, Florida, chartered by said corporation.

"4. The defendant Ralph M. Wimbish is President of the St. Petersburg Chapter of the defendant corporation, and the defendant Bette C. Wimbish is the wife of the defendant Ralph M. Wimbish.

Appendix A

"5. The plaintiff sought and this Court issued on December 6, 1960 a temporary restraining order restraining the defendants, all members of the St. Petersburg chapter of the NAACP, and all other persons acting in conjunction with the named defendants from committing any of the following acts.

"(a) Displaying signs, posters or handbills requesting that members of the public not trade with the plaintiff, either on the premises of the plaintiff or on the sidewalk immediately adjacent thereto.

"(b) Picketing the premises of the plaintiff located at 128 Ninth Street South, St. Petersburg, Florida, or interfering in any manner whatsoever with the free ingress and egress of the customers of the plaintiff at said place of business.

"(c) Placing telephone calls to the place of business of the plaintiff, except for the purpose of transacting legitimate business with the plaintiff.

"(d) Threatening any employee of the plaintiff, or threatening any person providing transportation to any such employee from his residence to the place of business of the plaintiff.

"6. The plaintiff alleges that the acts which have been enjoined were done with malicious intent to injure the business of the plaintiff and force the plaintiff to manage its business in a manner to suit the corporate defendant, and that said acts of the defendants were in fact injurious to the plaintiff's business. The plaintiff contends that such picketing is unlawful and subject to injunction in equity.

"7. The defendants challenge the temporary injunction previously issued herein on the ground *inter alia* that injunction is not a proper remedy and insist that any permanent injunction in this cause would be violative of

the defendants' rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States and by Sections 13 and 14 of the Declaration of Rights of the Constitution of the State of Florida. The defendants contend in effect that the picketing in this case was peaceful, as planned, and that peaceful picketing to impel compliance with the social and economic goals of the defendants is lawful and not subject to injunction.

"8. On December 2, 1960 a named group of approximately thirty men and women identified with the defendants, other than Bette C. Wimbish, began picketing the premises of the plaintiff in St. Petersburg, Florida, carrying large placards reading as follows:

> "DON'T BUY WHERE YOU CANNOT WORK ON ANY JOB OR BE UPGRADED TO BETTER PAYING POSITIONS."
>
> "BUY WITH FRIENDS, MERCHANTS WHO TREAT YOU WITH HUMAN DIGNITY."
>
> "DON'T PAY TO BE SEGRATED (sic). DON'T BUY FOR CHRISTMAS. JOIN THE NAACP'S SELECTIVE BUYING PROTEST."
>
> "DON'T BUY WHERE YOU AREN'T WELCOME."

"9. The defendants' picketing demonstration was planned and organized by the corporate defendant, acting through the Youth Counsel and the Selective Buying Committee of the St. Petersburg Chapter of the NAACP, with the intent to disrupt and discourage trade with the plaintiff and in protest of the plaintiff's policies of lunch counter segregation and not having Negro employees more in proportion to the percentage of plaintiff's Negro trade and not employing Negroes in top administrative positions.

"10. On December 2, 1960 the march of the picketers included an inside demonstration within the trading area of plaintiff's premises.

"11. The corporate defendant and its agents who organized the demonstration did not limit participation in the picketing to members of their organization, but on the contrary invited participation in the demonstration by any interested citizens.

"12. On December 6, 1960 one Jack Morrison, Jr., was arrested by the City Police of the City of St. Petersburg on a charge of unlawfully trespassing on the private property of the plaintiff, the evidence disclosing that said Jack Morrison, Jr., although not shown to be a member of the NAACP, was then and there an active participant in the demonstration, was obstructing an entrance to the plaintiff's premises and in so doing had been standing upon the threshold of said entrance. Subsequently the said Jack Morrison, Jr., was convicted of offense against municipal law of the City of St. Petersburg.

"13. The picketing demonstration resulted in a tense and inflammatory situation in and about the plaintiff's premises which adversely affected the peace and tranquility of the community of St. Petersburg and created an atmosphere of apprehension and potential violence.

"14. During the period from December 2 through December 6, 1960 the switchboard at the plaintiff's place of business was subjected to numerous telephone calls from undisclosed and unknown parties who used profane language directed toward the plaintiff and its employees.

"15. The aforesaid picketing continued for the period of December 2, 3, 5 and 6, 1960 and, as a direct consequence thereof, the plaintiff suffered loss of revenue of not less than $10,000.00 below the reasonably expected revenue for each of said days. These losses represented substantial damage to plaintiff's private business not adequately remediable by action or actions at law.

"• • •

Appendix A

"The Court is mindful of the various rights and freedoms comprehended, expressly or impliedly, within the protective provisions of the State and Federal Constitutions. Among these are freedom of speech and opinion and the right to protest and to seek personal betterment. Such are the indisputable rights of these defendants and of all other citizens but personal rights of this character are qualified rather than absolute because the law implicitly requires that individual rights be exercised with due regard for the rights of others who have the right to differ.

"Under the most liberal judicial concept of our constitutional system of government there remain, and should remain, some areas in which private individuals and business establishments have the legal right to pursue distinctive policies not wholly acceptable to others, and to resort to the police power of the state for relief against noxious encroachments upon such right.

"The right to protest the policies of lawful private interests such as plaintiff's may be exercised within proper limits, for example, through conventional modes of communication or by withholding patronage; but coercive and destructive picketing may be enjoined by a court of equity where, as in this case, there is no adequate remedy at law for continuing and recurring damages.

"This points up a well recognized reason for the extraordinary writ of injunction in equity. Law and order would be greatly disserved if restraint through courts of equity were not available in circumstances as disclosed by the record in this case. The only alternative of the aggrieved party, other than to surrender his legal rights, would be to retaliate in kind or resort to repeated institution of separate proceedings with respect to similar offenses after their commission. Such multiplicity of actions in police courts and law tribunals would be unduly burdensome and relatively ineffectual in curbing the unlawful

transgressions. See *Miami Typographic Union #430* v. *Ormerod, Fla.*, 61 So. (2d) 753.

"As indicated in the above cited decision of the Supreme Court of Florida, as well as in decisions of the Supreme Court of the United States, even peaceful picketing is not necessarily equated with the constitutional guarantee of freedom of speech. It follows that where picketing is damaging in purpose and effect, as in the instant case, the actions of the defendants are unlawful and are not clothed with constitutional protection.

"The defendants argue vindication of their picketing by pointing to the rectitude of their ultimate objectives, suggesting that the ends sought justify the means employed. This is a diversionary argument which begs the real question involved.

"IT IS THEREUPON ORDERED, ADJUDGED AND DECREED as follows:

"1. That the motion to dismiss made at the conclusion of the trial as to the defendant, Bette C. Wimbish, be and the same is hereby granted.

"2. That all motions to dissolve the temporary restraining order be and the same are hereby denied.

"3. That the motions to dismiss as to the defendants, National Association for the Advancement of Colored People and Ralph M. Wimbish, be and the same are hereby denied.

"4. That all motions to strike and to dismiss made preliminary to final hearing be and the same are hereby denied.

"5. That the application of the plaintiff for permanent injunction, except as to Bette C. Wimbish, be and the same is hereby granted and as to all other defendants the tem-

porary restraining order heretofore entered by this Court on December 6, 1960 is hereby continued in full force and effect and made a part of this final decree."

Is a boycott promoted by picketing to advance the interest of a particular racial or social group, other than labor organization or professional association, valid? This is a racial or social question and the laws applicable to labor disputes have no application here.

One's business, aside from the investment of money and tangible property employed therein, is in every sense of the word property, and, as such, if lawful, entitled to protection from all unlawful interference. 15 C. J. S., §§ 12, 1014, citing *Traux* v. *Corrigan* (per Justice Taft) 257 U. S. 312, 42 S. Ct. 124, 66 L. ed. 254.

The primary purpose of the picketing was to interfere with Webb's right to an unhampered market for the sale of its commodities and services by coercing customers or prospective customers into withholding patronage and thereby to cause injury to Webb's business; its purpose was to injure by inducing a customer boycott, and it did.

We are not dealing with the rights of the defendants to use concerted action in appealing to others to cease to patronize Webb's City, but to the contrary, we are dealing with the question as to whether or not such an appeal may be made by coercive picketing. As stated in *Hughes* v. *Superior Court*, 339 U. S. 460, 70 S. Ct. 718, 94 L. ed. 985:

> "[T]he domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states, *Palko* v. *Connecticut*, 302 U. S. 319, 327, no doubt includes liberty of thought and appropriate means for expressing it. But while picketing is a mode of communication it is inseparably something more and different. Industrial picketing 'is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another,

quite irrespective of the nature of the ideas which are being disseminated.' Mr. Justice Douglas, joined by Black and Murphy, JJ., concurring in *Bakery & Pastry Drivers & Helpers Local* v. *Wohl*, 315 U. S. 768, 775, 776. Publication in a newspaper, or by distribution of circulars, may convey the same information or make the same information or make the same charge as do those patrolling a picket line. But the very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication. The loyalties and responses evoked and exacted by picket lines are unlike those flowing from appeals by printed word."

The defendants had a right to buy where they please and by concerted action to cease patronizing Webb's when they considered it to their interest to do so; and in turn Webb's City had a right not to sell. As stated in Cooley in Torts 278: "It is a part of man's legal rights . . . that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rest upon reason, or is the result of whim, caprice, prejudice, or malice."

When considering the plaintiff's interest in its commercial expectancies from its business weighed against the defendants' interest in advancing their social objectives and the injury occasioned by the defendants' coercive picketing causing plaintiff's customers and prospective customers not to enter into or continue business relations with the plaintiff, it appears that the Chancellor has not erred. *Green* v. *Samuelson*, 168 Md. 421, 178 A. 109, 99 A. L. R. 528; *A. S. Beck Shoe Corp.* v. *Johnson*, 153 Miscl. 363, 274 N. Y. S. 946; Restatement, Torts, § 766; 48 Harvard Law Rev. 691, 56 Harvard Law Review 180, 513, 532 and 484 (text 486).

Affirmed.

SHANNON, *C. J.*, and SMITH, *J.*, Concur.

APPENDIX B

Order of the Supreme Court of Florida

September 25, 1962

June 11, 1962, this Court entered an order in the above cause transferring the cause to the District Court of Appeal of Florida, Second District, for lack of jurisdiction in this Court to dispose of the cause and the order stated that it would be transferred in five (5) days thereafter unless in the meantime, attorneys for the parties, or any of them should bring to the attention of the Court that the cause is one which should be heard and determined by this Court. Thereafter, on June 16, 1962, the attorneys for the appellants filed objections to said transfer and brief in support of the contention that the Supreme Court has jurisdiction of the cause, and upon consideration thereof, it is ordered that the objections to said transfer be and are hereby overruled, and the Clerk of this Court is directed to transfer this cause forthwith to the District Court of Appeal, Second District.

A True Copy.

Test:

GUYTE P. MCCORD,
Clerk Supreme Court.

Appendix B

Order of the Supreme Court of Florida

June 11, 1962

It appearing to the Court that the issues involved in the appeal in the above cause are matters within the jurisdiction of the District Court of Appeal of Florida, Second District, therefore, pursuant to the provisions of Florida Appeliate Rules, it is ordered that said cause be transferred to said District Court for consideration and determination after five (5) days from this date provided, in the meantime, attorneys of record for the parties, or any of them shall bring to the attention of the Court that the cause is one which should be heard and determined by this Court.

A True Copy.

Test:

GUYTE P. MCCORD,
Clerk Supreme Court.

APPENDIX C

Opinion of the Circuit Court of the Sixth Judicial Circuit of the State of Florida in and for Pinellas County

May 3, 1961

This cause came on for hearing upon the application of the plaintiff for permanent injunction, the motions to strike pleadings and to dismiss complaint and dissolve temporary restraining order on behalf of the defendants Ralph M. Wimbish and Bette C. Wimbish, and upon the motion to dismiss on behalf of the defendant National Association for the advancement of Colored People, a non-profit New York corporation; whereupon the Court having considered the pictorial exhibits in evidence, the testimony of the witnesses and the able arguments of counsel for the respective parties, and being fully advised in the premises, finds as follows:

1. This Court has jurisdiction of the parties and of the subject matter of this cause.

The plaintiff is a Florida corporation privately owned and organized and doing a general mercantile business in the City of St. Petersburg, Pinellas County, Florida.

3. The defendant National Association for the Advancement of Colored People, commonly known as the NAACP, is a non-profit New York corporation authorized to operate in the State of Florida and having a local chapter in St. Petersburg, Florida, chartered by said corporation.

4. The defendant Ralph M. Wimbish is President of the St. Petersburg Chapter of the defendant corporation, and the defendant Bette C. Wimbish is the wife of the defendant Ralph M. Wimbish.

Appendix C

5. The plaintiff sought and this Court issued on December 6, 1960 a temporary restraining order restraining the defendants, all members of the St. Petersburg chapter of the NAACP, and all other persons acting in conjunction with the named defendants from committing any of the following acts:

(a) Displaying signs, posters or handbills requesting that members of the public not trade with plaintiff, either on the premises of the plaintiff or on the sidewalk immediately adjacent thereto.

(b) Picketing the premises of the plaintiff located at 128 Ninth Street South, St. Petersburg, Florida, or interfering in any manner whatsoever with the free ingress and egress of the customers of the plaintiff at said place of business.

(c) Placing telephone calls to the place of business of the plaintiff, except for the purpose of transacting legitimate business with the plaintiff.

(d) Threatening any employee of the plaintiff, or threatening any person providing transportation to any such employee from his residence to the place of business of the plaintiff.

6. The plaintiff alleges that the acts which have been enjoined were done with malicious intent to injure the business of the plaintiff and force the plaintiff to manage its business in a manner to suit the corporate defendant, and that said acts of the defendants were in fact injurious to the plaintiff's business. The plaintiff contends that such picketing is unlawful and subject to injunction in equity.

7. The defendants challenge the temporary injunction previously issued herein on the ground *inter alia* that injunction is not a proper remedy and insist that any per-

mament injunction in this cause would be violative of the defendants' rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States and by Sections 13 and 14 of the Declaration of Rights of the Constitution of the State of Florida. The defendants contend in effect that the picketing in this case was peaceful, as planned, and that peaceful picketing to impel compliance with the social and economic goals of the defendants is lawful and not subject to injunction.

8. On December 2, 1960 a named group of approximately thirty men and women identified with the defendants, other than Bette C. Wimbish, began picketing the premises of the plaintiff in St. Petersburg, Florida, carrying large placards reading as follows:

> "Don't Buy Where You Cannot Work on any Job or be Upgraded to Better Paying Positions."
>
> "Buy With Friends: Merchants Who Treat You With Human Dignity."
>
> "Don't Pay to be Segregated. Don't Buy for Christmas. Join the NAACP's Selective Buying Protest."
>
> "Don't Buy Where You Aren't Welcome."

9. The defendants' picketing demonstration was planned and organized by the corporate defendant, acting through the Youth Counsel and the Selective Buying Committee of the St. Petersburg Chapter of the NAACP, with intent to disrupt and discourage trade with the plaintiff and in protest of the plaintiff's policies of lunch counter segregation and not having Negro employees more in proportion to the percentage of plaintiff's Negro trade and not employing Negroes in top administrative positions.

Appendix C

10. On December 2, 1960 the march of the picketers included an inside demonstration within the trading area of plaintiff's premises.

11. The corporate defendant and its agents who organized the demonstration did not limit participation in the picketing to members of their organization, but on the contrary invited participation in the demonstration by any interested citizens.

12. On December 6, 1960 one Jack Morrison, Jr. was arrested by the City Police of the City of St. Petersburg on a charge of unlawfully trespassing on the private property of the plaintiff, the evidence disclosing that said Jack Morrison, Jr., although not shown to be a member of the NAACP, was then and there an active participant in the demonstration, was obstructing an entrance to the plaintiff's premises and in so doing had been standing upon the threshold of said entrance. Subsequently the said Jack Morrison, Jr. was convicted of offense against municipal law of the City of St. Petersburg.

13. The picketing demonstration resulted in a tense and inflammatory situation in and about the plaintiff's premises which adversely affected the peace and tranquility of the community of St. Petersburg and created an atmosphere of apprehension and potential violence.

14. During the period from December 2 through December 6, 1960 the switchboard at the plaintiff's place of business was subjected to numerous telephone calls from undisclosed and unknown parties who used profane language directed toward the plaintiff and its employees.

15. The aforesaid picketing continued for the period of December 2, 3, 5 and 6, 1960 and, as a direct consequence

thereof, the plaintiff suffered loss of revenue of not less than $10,000.00 below the reasonably expected revenue for each of said days. These losses represented substantial damage to plaintiff's private business not adequately remediable by action or actions at law.

16. The defendant, Bette C. Wimbish, took no active part in the organization of the demonstrations or in the demonstrations themselves and is therefore not a proper party in this cause.

The Court is mindful of the various rights and freedoms comprehended, expressly or impliedly, within the protective provisions of the State and Federal Constitutions. Among these are freedom of speech and opinion and the right to protest and to seek personal betterment. Such are the indisputable rights of these defendants and of all other citizens; but personal rights of this character are qualified rather than absolute because the law implicitly requires that individual rights be exercised with due regard for the rights of others who have the right to differ.

Under the most liberal judicial concept of our constitutional system of government there remain, and should remain, some areas in which private individuals and business establishments have the legal right to pursue distinctive policies not wholly acceptable to others, and to resort to the police power of the state for relief against noxious encroachments upon such right.

The right to protest the policies of lawful private interests such as plaintiff's may be exercised within proper limits, for example, through conventional modes of communication or by withholding patronage; but coercive and destructive picketing may be enjoined by a court of equity where, as in this case, there is no adequate remedy at law for continuing and recurring damages.

This points up a well recognized reason for the extraordinary writ of injunction in equity. Law and order would

be greatly disserved if restraint through courts of equity were not available in circumstances as disclosed by the record in this case. The only alternatives of the aggrieved party, other than to surrender his legal rights, would be to retaliate in kind or resort to repeated institution of separate proceedings with respect to similar offenses after their commission. Such multiplicity of actions in police courts and law tribunals would be unduly burdensome and relatively ineffectual in curbing the unlawful transgressions. See *Miami Typographic Union #430* v. *Ormerod, Fla.*, 61 So. (2d) 753.

As indicated in the above cited decision of the Supreme Court of Florida, as well as in decisions of the Supreme Court of the United States, even peaceful picketing is not necessarily equated with the constitutional guarantee of freedom of speech. It follows that where picketing is inflammatory and damaging in purpose and effect, as in the instant case, the actions of the defendants are unlawful and are not clothed with constitutional protection.

The defendants argue vindication of their picketing by pointing to the rectitude of their ultimate objectives, suggesting that the ends sought justify the means employed. This is a diversionary argument which begs the real question involved.

IT IS THEREUPON ORDERED, ADJUDGED AND DECREED as follows:

1. That the motion to dismiss made at the conclusion of the trial as to the defendant, Bette C. Wimbish, be and the same is hereby granted.

2. That all motions to dissolve the temporary restraining order be and the same are hereby denied.

3. That the motions to dismiss as to the defendants, National Association for the Advancement of Colored People and Ralph M. Wimbish, be and the same are hereby denied.

4. That all motions to strike and to dismiss made preliminary to final hearing be and the same are hereby denied.

5. That the application of the plaintiff for permanent injunction, except as to Bette C. Wimbish, be and the same is hereby granted and as to all other defendants the temporary restraining order heretofore entered by this Court on December 6, 1960 is hereby continued in full force and effect and made a part of this final decree.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida, this 3rd day of May A. D. 1961.

/s/ JACK F. WHITE
Circuit Judge

SUPREME COURT, U. S.
FILED
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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 362

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*, *Petitioners*,

v.

WEBB'S CITY, INC., *Respondent*.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

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October 11, 1963

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WEBB'S CITY, INC., *Respondent.*

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

JURISDICTION

Petitioners seek a writ of certiorari to review a judgment of the District Court of Appeal of Florida, Second District, entered on April 17, 1963 (Appendix A to NAACP Petition). Petitioners base their claim for jurisdiction on 28 U.S.C. § 1257(3), but they do not seek review of the statutorily required "final judg-

ment . . . rendered by the highest court of a State in which a decision could be had." Under Article V, Section 4(2) of the Florida Constitution and Rule 2.1(5)(b) of the Florida Appellate Rules, review of the decision of the District Court of Appeal could have been sought in the Supreme Court of Florida. The failure to have sought such review renders the subject petition for writ of certiorari jurisdictionally defective, and it accordingly must be dismissed or denied.

QUESTIONS PRESENTED

1. Whether this Court can or should exercise jurisdiction over a petition for writ of certiorari when petitioners failed to seek a final judgment by the highest court of the State of Florida in which a decision could be had.

2. Whether, assuming jurisdiction, despite no claim by petitioners that the findings of the trial court or the intermediate appellate court were clearly erroneous, this Court should undertake merely to review the evidence and the findings based thereon.

3. Whether, assuming jurisdiction, in the circumstances of this case, the issuance of an injunction against certain specific conduct of petitioners constituted a deprivation of their constitutional rights.

CONSTITUTIONAL PROVISIONS AND RULES INVOLVED

The pertinent parts of Article V, Section 4 of the Florida Constitution are set forth in the Appendix to this brief. As there noted, Sections 2.1(5)(a) and (b) of the Florida Appellate Rules are identical in language.

COUNTERSTATEMENT OF THE CASE

The question of the issuance of an injunction against petitioners was tried before the Circuit Court of the Sixth Judicial Circuit of the State of Florida in and for Pinellas County. Careful findings were made by the Circuit Judge (sitting as Chancellor) in issuing an injunction; those findings subsequently were affirmed on review by the District Court of Appeal of Florida, Second Circuit. (Appendices C and A to NAACP Petition.) Petitioners do not claim those judicial findings to be clearly erroneous, but their statement of the case essentially disregards them and presents an incomplete and inaccurate factual picture. For this reason, although respondent submits that the petition for writ of certiorari must be dismissed for lack of jurisdiction and although it is not the function of this Court merely to resolve a factual dispute between parties, it is appropriate to state the facts within the confines of the findings of the courts below.

Webb's City, Inc. is a privately owned Florida corporation which does a varied and general mercantile business in the City of St. Petersburg, Florida. It employs approximately 1,700 employees, of whom approximately 150 are Negroes. With the exception of the store's eating facilities, Negro customers are welcome in all phases of its operations. Negroes are excluded from that part of the cafeteria where customers are seated. [R. 69-72 (R. 68, T. 4-8, 65).][1]

[1] The first citation within the brackets is to the trial court's findings; the citations within the parentheses are to the evidence supporting those findings. The record of the trial in the Circuit Court of the Sixth Judicial Circuit of the State of Florida was given the single page number 68; therefore it will be cited as R. [for record page] 68, T. [for transcript page].

On December 2, 1960, a group of approximately 30 men and women identified with the St. Petersburg Chapter of the National Association for the Advancement of Colored People began picketing Webb's City. The picketers carried placards which urged members of the public not to buy at Webb's City. The picketing was planned and conducted "with intent to disrupt and discourage trade with . . . [Webb's City] and in protest of . . . [its] policies of lunch counter segregation and not having Negro employees more in proportion to the percentage of . . . [its] Negro trade and not employing Negroes in top administrative positions." [R. 72 (R. 68, T. 58-59, 62).]

During the afternoon of December 2, 1960, the demonstrators marched into the trading area of respondent's premises. [R. 72.] Webb's City's president, J. E. Webb, testified that two groups composed of seven to ten men were "forcing their way with banners through various crowded areas of the store . . . . that the clerks were excited and more or less terrified. A lot of the elderly people immediately left the store." (R. 68, T. 11-12, 18.) The marchers went back outside the store after they were asked to leave by store executives and police arrived. (R. 68, T. 19-21.)

The picketing in front of the entrances to Webb's City continued without interference from respondent or the local authorities from December 2 through December 5, 1960. During this period the Webb's City switchboard "was subjected to numerous telephone calls from undisclosed and unknown parties who used profane language directed toward . . . [Webb's City] and its employees." [R. 73 (R. 68, T. 54-56).] Bombing threats were received during this period. (R. 68, T. 55.) On December 6, 1960, one of the participants

in the picketing—carrying a placard prepared by the NAACP—began physically interfering with customers attempting to enter Webb's City. This person was arrested; he subsequently entered a guilty plea to a charge of trespass. [R. 72-73 (R. 68, T. 11-12, 15, 35-40, 42-44, 71).] On the same day, respondent sought and the Circuit Court of the Sixth Judicial Circuit issued a temporary restraining order enjoining petitioners and all persons acting in conjunction with the petitioners from committing any of the following acts:

> "(a) Displaying signs, posters or handbills requesting that members of the public not trade with plaintiff, either on the premises of the plaintiff or on the sidewalk immediately adjacent thereto.
>
> "(b) Picketing the premises of the plaintiff located at 128 Ninth Street South, St. Petersburg, Florida, or interfering in any manner whatsoever with the free ingress and egress of the customers of the plaintiff at said place of business.
>
> "(c) Placing telephone calls to the place of business of the plaintiff, except for the purpose of transacting legitimate business with the plaintiff.
>
> "(d) Threatening any employee of the plaintiff, or threatening any person providing transportation to any such employee from his residence to the place of business of the plaintiff." [R. 70-71.]

Subsequently, on March 8, 1961, the cause came on for hearing before the Circuit Court of the Sixth Judicial Circuit on various motions by petitioners and on respondent's application for a permanent injunction. Petitioners disclaimed responsibility for the invasion of respondent's premises, for the invective, insulting, and threatening phone calls, and for the physical interference with customers entering Webb's

City. Notwithstanding such disclaimers, the Chancellor found that: "The corporate defendant and its agents who organized the demonstration did not limit participation in the picketing to members of their organization, but on the contrary invited participation in the demonstration by any interested citizen." [R. 72 (R. 68, T. 83-84, 86, 108-09).] The person arrested for trespassing had used a placard prepared by petitioners to block customers from one of the entrances to Webb's City, and petitioners took no steps to restrain such conduct. (R. 68, T. 37-39, 71.) Additionally, the period during which the Webb's City switchboard was flooded with insulting and profane telephone calls coincided with the picketing. (R. 68, T. 55-56.)

The circuit judge, sitting as Chancellor, ultimately found that the picketing demonstration conducted by petitioners "resulted in a tense and inflammatory situation in and about . . . [Webb's City's] premises which adversely affected the peace and tranquility of the community of St. Petersburg and created an atmosphere of potential violence." [R. 72 (R. 68, T. 11-12, 18-19, 36-37, 39, 51-52, 55).] The court also found that, as a direct consequence of such conduct, Webb's City "suffered loss of revenue of not less than $10,000.00 below the reasonably expected revenue for each of said days." [R. 73.] Accordingly, on May 3, 1961, the circuit court issued its judgment and decree granting the application for permanent injunction. [R. 76.] The decree, quoted *supra*, was narrowly limited to proscribe only certain conduct. It did not enjoin petitioners from continuing an economic boycott of Webb's City, or from the future exercise of their rights to protest any policies of Webb's City

with which they may be in disagreement "through conventional modes of communication." [R. 74.]

After respondent prevailed in the trial court, petitioners made a tactical decision as to judicial review. Rather than taking an appeal as of right to the intermediate District Court of Appeal of Florida, Second District, they elected to attempt to fit this case into the limited category of those in which a direct appeal may be taken from the trial court to the Supreme Court of Florida. Contending that the trial court had met the required constitutional test of "construing a controlling provision of the Florida or federal constitution" [Florida Constitution, Article V, Section 4(2)], petitioners on June 28, 1961 sought an appeal to the Supreme Court of Florida.

After the receipt of briefs and argument (including a memorandum by petitioners arguing in support of the jurisdiction of the Supreme Court of Florida), on September 25, 1962 the Supreme Court of Florida concluded that it did not have jurisdiction of the appeal. It transferred the case to the intermediate District Court of Appeal, Second District (NAACP Petition, Appendix B). The latter court affirmed the trial court's findings and decree on April 17, 1963 (NAACP Petition, Appendix A).

Petitioners elected not to seek review of that judgment in the Supreme Court of Florida. Instead, they filed a petition for writ of certiorari in this Court on August 12, 1963.

REASONS FOR DENYING WRIT

I. THE PETITION FOR WRIT OF CERTIORARI IS JURISDICTIONALLY DEFECTIVE

As noted in the counterstatement of facts, *supra*, petitioners took no steps to seek review by the Supreme Court of Florida—the highest court in that state—of the judgment of the intermediate District Court of Appeal. Accordingly, since a procedure for review by the Supreme Court of Florida readily was available to petitioners, the judgment which they now seek to have reviewed by this Court was not "rendered by the highest court of a State in which a decision could be had . . . ." 28 U.S.C. § 1257. The petition for a writ of certiorari thus is jurisdictionally defective.

The procedures for state court review which were available to petitioners are provided by Article V, Section 4(2) of the Florida Constitution. It provides in pertinent part that:

> "The supreme court may review by certiorari any decision of a district court of appeal . . . that passes upon a question certified by the district court of appeal to be of great public interest . . . ." [Florida Appellate Rule 2.1(5)(b) is identical.]

The quoted language is part of a 1957 constitutional amendment which was intended to make the Supreme Court of Florida a court of limited, rather than general, appellate jurisdiction.[2] Prior to 1957, the Supreme Court of Florida found that parties receiving adverse judgments in the district courts of appeal would petition for writs of certiorari virtually as a

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[2] See generally, Dreisbach, *Where To Appeal in Florida*, 32 FLA. B.J. 109, 115 (1958).

matter of course.[3] The review of such petitions, many of which presented frivolous questions, kept that court from giving adequate considerations to cases involving questions of great public interest. See *Lake* v. *Lake*, 103 So. 2d 639, 640-43 (Fla. 1958).

As fixed by the 1957 amendment, certiorari jurisdiction of the Supreme Court of Florida is basically similar to the jurisdiction of this Court to review the judgments of federal courts of appeals under 28 U.S.C. § 1254(1).[4] The primary difference (of vital significance here) is that under the Florida procedure, the intermediate appellate court rather than the highest court determines whether the case involves a question of great public interest.

The procedure for certification of a question of great public interest to the Supreme Court of Florida can be by the motion, *sua sponte*, of the district court of appeal, but usually it is initiated by petition of the losing party.[5] Once the district court of appeal certifies a question as being of "great public interest," the Florida Supreme Court then has jurisdiction to review the entire case on a writ of certiorari.[6] While the granting of the writ of certiorari remains within the

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[3] The former Article V, Section 5 of the Florida Constitution provided in pertinent part that: "The Supreme Court shall have appellate jurisdiction in all cases at law and in equity originating in circuit courts . . . ."

[4] Dreisbach, *supra* n. 2, at 114-15.

[5] See *Susco Car Rental System of Florida* v. *Leonard*, 112 So.2d 832, 834 n. 5 (Fla. 1959); James, *Certiorari Power of the Florida Supreme Court To Review Decisions of the District Courts of Appeal*, 15 MIAMI L. REV. 258, 259 (1961).

[6] *E.g.*, *Susco Car Rental System of Florida* v. *Leonard*, *supra*; *James* v. *Keene*, 133 So.2d 297, 298 (Fla. 1961); *Zirin* v. *Charles Pfizer & Co., Inc.*, 128 So.2d 594, 596-97 (Fla. 1961).

discretion of the Florida Supreme Court, the determination of the district court of appeal that the case involves a question of great public interest vests jurisdiction in the Supreme Court and is not subject to further review by the latter court. *Susco Car Rental System of Florida* v. *Leonard, supra,* 112 So. 2d at 834-35. Recognizing its constitutional function, the Supreme Court of Florida repeatedly has issued writs of certiorari in cases in which the district courts of appeal have certified the questions involved to be ones of great public interest.[7]

It is impossible to say that the district court of appeal would not have certified this case to the Supreme Court of Florida *had such certification been sought.* For reasons best known to themselves, petitioners decided against seeking such certification. Thus, the Supreme Court of Florida has had no opportunity to review the judgment herein, and the instant petition for a writ of certiorari addressed to this Court is fatally defective for want of jurisdiction. *E.g., Market Street Ry.* v. *Railroad Comm'n of California,* 324 U.S. 548, 551 (1945); *Gorman* v. *Washington University,* 316 U.S. 98, 99-101 (1942); *Stratton* v. *Stratton,* 239 U.S. 55, 56-57 (1915); *Mullen* v. *Western Union Beef Co.,* 173 U.S. 116, 119-123 (1899).

A case squarely in point is *Fisher* v. *Perkins,* 122 U.S. 522 (1887), in which a writ of error to the Superior Court of Kentucky was sought for review of a judgment of that court. The amount in litigation was less

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[7] *Ibid;* also *State* v. *Clemmons,* 150 So.2d 231 (Fla. 1963); *Farley* v. *Collins,* 146 So.2d 366 (Fla. 1962); *Confederation of Canada Life Ins. Co.* v. *Arminan,* 144 So.2d 805 (Fla. 1962); *Scherer & Sons, Inc.* v. *International Ladies' Garment Workers' Union,* 142 So.2d 290, 291 (Fla. 1962); *Sturgis* v. *Canal Ins. Co. of Greenville, South Carolina,* 122 So.2d 313 (Fla. 1960).

than $1,000, and the Court of Appeals, the highest court of Kentucky, did not have jurisdiction to review the final judgment of the intermediate Superior Court in such a case unless " 'any two of the judges of the Superior Court shall certify that, in their opinion, the question involved is novel, and is one of sufficient importance . . . .' " 122 U.S. at 523. No application had been made to the Superior Court for the allowance of an appeal to the Court of Appeals under the foregoing statute prior to seeking relief in this Court. This Court held that it lacked jurisdiction, stating:

> "The want of a certificate is good reason for refusing to allow an appeal, but until it has been asked for and refused its absence furnishes no ground for a writ of error from this court." 122 U.S. at 526.

Petitioners' sole attempt at justification of their fatal failure to exhaust their remedies below is the statement on page 6 of their petition that there were "no grounds for appealing the District Court's affirmance to the Supreme Court of Florida other than those already rejected by the Supreme Court of Florida." Such a statement is inaccurate, and disregards the certiorari provisions of the Florida constitution.

As noted *supra*, a direct appeal may be taken from a trial court to the Supreme Court of Florida from decisions "construing a controlling provision of the Florida or federal constitution." Florida Constitution, Article V, Section 4(2). When the Supreme Court of Florida, after receiving the benefit of briefs and argument, rejected jurisdiction of the case and transferred it to the intermediate court of appeal for resolution, such action probably did constitute a determination that the trial court's decision did not *construe* "a controlling provision of the Florida or federal

constitution." Although no reason was spelled out for transferring the case to the district court of appeal, the Supreme Court of Florida in other cases repeatedly has rejected direct appeals from Florida circuit (trial) courts on the ground that the judgment of the trial court did not *construe*, as distinguished from *apply*, a controlling provision of the federal or state constitution. *E.g., Armstrong* v. *City of Tampa*, 106 So. 2d 407, 409-10 (Fla. 1958); *accord, Page* v. *State*, 113 So. 2d 557, 558 (Fla. 1959). Thus, the rejection of jurisdiction by the Supreme Court of Florida of the petitioners' direct appeal "must be taken, nothing else appearing, as a holding by that court that the case was not one in which an appeal lay as a matter of right." *McMaster* v. *Gould*, 276 U.S. 284, 286 (1928).[8] In the *McMaster* case, this Court held that even if an appeal as a matter of right be dismissed, a petitioner still must pursue discretionary review by his highest state court if such procedures are available. 276 U.S. at 286-87; *accord, Matthews* v. *Huwe*, 269 U.S. 262, 265-66 (1925); *Southern Electric Co.* v. *Stoddard*, 269 U.S. 186, 189-90 (1925).

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[8] The cases of *Minneapolis, St. Paul & Sault Ste. Marie Ry.* v. *Rock*, 279 U.S. 410 (1929), and *Chesapeake & Ohio Ry.* v. *Mihas*, 280 U.S. 102 (1929), are readily distinguishable. In those cases, this Court held that a petitioner did not have to request the intermediate appellate court to certify a question of importance to the state supreme court *after* the highest court had denied a writ of certiorari. As this Court noted in the former case, by denying the writ of certiorari, the state supreme court, in effect, had affirmed the judgment of the inferior court, and "it would be unreasonable to require a defeated party to apply to the judges of the lower court for a certificate of importance and appeal after the Supreme Court had so approved the judgment." 279 U.S. at 412. Conversely, in this case the Supreme Court of Florida has had no opportunity to pass on the validity of the judgment of which review is now sought in this Court, for it lacked jurisdiction to review by direct appeal in the first instance and discretionary review by a writ of certiorari was not sought later.

The procedural defect in petitioners' position is glaringly apparent. Basically, whatever meaning is attached to the prior transfer of this case by the Supreme Court of Florida to the district court of appeal is irrelevant. Section 4(2) of Article V of the Florida Constitution still provides, in addition to its appeal provisions, that: "The supreme court may review by certiorari any decision of a district court of appeal . . . that passes upon a question certified by the district court of appeal to be of great public interest." Simply stated, to exhaust their remedies below, petitioners had to seek a certification of great public interest. Had such a certification been granted, their case could (and undoubtedly would) have been reviewed by the Supreme Court of Florida. Had such a certification been denied, the opinion of the district court of appeal *then* would have become the judgment of the highest Florida court in which a decision could be had. In either eventuality, review subsequently could have been sought in this Court pursuant to 28 U.S.C. § 1257(3). In the absence of either eventuality, as is true here, this Court has no jurisdiction and the petition for writ of certiorari must be dismissed or denied, for no party can gain access to review by this Court by the simple expedient of speculating that exhaustion of its state remedies would have proven unsuccessful.[9] *Stratton* v. *Stratton*, *supra*, 239 U.S. at 56.

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[9] Section 4(a) of Article V of the Florida Constitution also provides that the Supreme Court of Florida may review by certiorari any decision of a district court of appeal "that is in direct conflict with a decision . . . of the supreme court on the same point of law." Petitioners appear to contend on page 12 of their petition that the decision of the district court of appeal is in conflict with a decision of the Supreme Court of Florida. If this is their position, petitioners thus supply a second reason why their failure to seek certiorari from the Supreme Court of Florida deprives this Court of jurisdiction over this case.

II. EVEN IF THERE WERE JURISDICTION, PETITIONERS SEEK ESSENTIALLY A REVIEW OF THE FACTS, AND THE LIMITED INJUNCTION GRANTED BY THE FLORIDA COURT IS ENTIRELY REASONABLE IN THE CIRCUMSTANCES

Without intending criticism, we point out that petitioners' version of the facts is considerably euphemized, and many of the legal principles which it sets forth are sound but irrelevant here. The abstract question of constitutional law which petitioners argue simply is not present in this case. Rather, the question is "whether the decree rendered was that which should have been rendered in the light of the entire case as disclosed by the record." *McClintock, Equity* 40 (2d ed. 1948). Both the trial court and the intermediate appellate court of Florida found substantial factual support in the record for the decree which petitioners now ask this Court to review. However, even if there were jurisdiction in this case (which we deny), this Court should not "undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *Graver Tank & Mfg. Co., Inc.* v. *Linde Air Products Co.*, 336 U.S. 271, 275 (1949). Nor should certiorari be granted merely "to review evidence and discuss specific facts." *United States* v. *Johnston*, 268 U.S. 220, 227 (1925).

Picketing, by its very nature, involves something more than mere free speech, and it therefore is subject to reasonable restraints which cannot be applied to conventional forms of communication. *Building Service Union* v. *Gazzam*, 339 U.S. 532, 537 (1950); *Bakery Drivers Local* v. *Wohl*, 315 U.S. 769, 774-75 (1942); *Senn* v. *Tile Layers Union*, 301 U.S. 468, 478-79 (1937).

The reason for such a rule is best illustrated by reference to the facts of this case. Testimony at trial revealed that various acts of misconduct attributable to

the picketers occurred during the demonstrations. These included the intimidation of customers and employees both within and without the store, interference with the free ingress and egress of customers, bomb threats, and insulting telephone calls. (R. 68, T. 10-14, 18, 36-38, 51-52, 55, 59, 83-85, 108-09.) Petitioners contend that since none of those acts could be directly attributed to members of the NAACP, the injunction was improvidently granted. (NAACP Petition, p. 11.) But petitioners invited the public to join with them in the demonstration, and as this Court stated in *Building Service Union* v. *Gazzam, supra:*

> "... picketing is more than speech and establishes a *locus in quo* that has far more potential for inducing action or nonaction than the message the pickets convey ...." 339 U.S. at 537.

Thus, at the very least having induced members of the public to join in their protest against Webb's City, petitioners cannot disclaim responsibility for acts of misconduct which were a direct consequence of that invitation.

Although petitioners infer throughout their petition that the decree of the Florida circuit court proscribes *all* expressions of protest by picketing, the injunction merely forbids repetitions of the various acts of misconduct which were found to have occurred, and limits the picketing to some place other than the premises of Webb's City or the sidewalks immediately adjacent thereto. In view of the number of pickets, their proximity to the entrances of Webb's City, and the several harrassing activities which took place, the limited injunction certainly was not unreasonable as the most appropriate means of preventing a "tense and

inflammatory situation" from deteriorating into violence.[10]

WHEREFORE, in consideration of the foregoing premises, the petition for writ of certiorari should be dismissed for want of jurisdiction or denied.

Respectfully submitted,

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October 11, 1963

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[10] "The question is in each case whether the number of pickets plus the attendant circumstances are such that fear of physical harm rather than persuasion is the force loosed upon the persons sought to be influenced." RESTATEMENT, TORTS, § 779, Comment h (1939). Unlike the statute in *Thornhill* v. *Alabama*, 310 U.S. 88, 104 (1940), which forbade "nearly every practical, effective means whereby those interested . . . may enlighten the public on the nature and causes of a labor dispute," the injunction in this case does not interfere with petitioners' "right to protest the policies of lawful private interests such as . . . [Webb's City's] within proper limits." [R. 74.]

APPENDIX

Florida Constitution Article V, Section 4(2) provides in pertinent part as follows:

"*Jurisdiction.* Appeals from trial courts may be taken directly to the supreme court, as a matter of right, only from judgments imposing the death penalty, from final judgments or decrees directly passing upon the validity of a state statute or a federal statute or treaty, or construing a controlling provision of the Florida or federal constitution, and from final judgments or decrees in proceedings for the validation of bonds and certificates of indebtedness.

• • •

"Appeals from the district courts of appeal may be taken to the supreme court, as a matter of right, only from decisions initially passing upon the validity of a state statute or a federal statute or treaty, or initially construing a controlling provision of the Florida or federal constitution. The supreme court may review by certiorari any decision of a district court of appeal that affects a class of constitutional or state officers, or that passes upon a question certified by the district court of appeal to be of great public interest, or that is in direct conflict with a decision of another district court of appeal or of the supreme court on the same point of law, and may issue writs of certiorari to commissions established by law."

Florida Appellate Rules 2.1(5)(a) & (b) are identical.

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v.

WEBB'S CITY, INC., a Corporation.

REPLY BRIEF FOR PETITIONERS

Argument

1. Respondent asserts that a procedure for review by the Supreme Court of Florida was available to petitioners and thus the judgment below was not final since it was not rendered by the highest court of the state in which a judgment could be had. Petitioners persist in their original contention that the judgment below is a final judgment within the meaning of Title 28, United States Code, Section 1257, since it was not reviewable by the Supreme Court of Florida.

The Florida Constitution, Article V, Sec. 4(2) and the Florida Appellate Rules #2.1a5(b) set forth the jurisdictional bases in question:

> *Appeals* from district courts of appeal may be taken to the Supreme Court, as a matter of right, only from decisions [1] initially passing upon the validity of a state statute, a federal statute or treaty, or [2] initially construing a controlling provision of

> the Florida or federal Constitution. The Supreme Court may review by *certiorari* any decision of a district court of appeal that [1] affects a class of constitutional or state officers, or that [2] passes upon a question certified by the district court of appeal to be of great public interest, or that [3] is in direct conflict with a decision of another district court of appeal or of the Supreme Court on the same point of law, and may issue writs of certiorari to commissions established by law (numerals and emphasis supplied).

Appeal grounds numbered 1 and 2 and certiorari ground numbered 1, are clearly irrelevant as the district court of appeal did not pass upon the validity of any state statute, federal statute, or federal treaty, initially or otherwise; nor did that court construe any controlling constitutional provision, initially or otherwise;[1] nor does any aspect of the case involve or affect any class of constitutional or state officers. While not disputing the irrelevance of these provisions, respondent contends that certiorari review could have been sought in the Supreme Court of Florida because (certiorari ground numbered 2) a question could have been certified by the district court of appeal to be of great public interest, and because (according to footnote 9 on page 13 of respondent's brief) there is a direct conflict between the appellate decision and one of the Supreme Court of Florida.

Analysis of the case law will show that certiorari ground numbered 2 is inapplicable since it is the function, responsibility, and privilege of the district court of appeal alone, to certify a question to be of great public interest so that the Florida Supreme Court may in its discretion grant certiorari. In *Susco Car Rental System of Fla.* v. *Leonard*, 112 So. 2d 832 (Fla. 1959), the Florida Supreme Court held that the appeal court's determination that a certified ques-

[1] The Supreme Court of Florida in refusing a direct appeal from the trial court in effect held that no construction of a constitutional provision as distinguished from application thereof was involved.

tion of great public interest exists is conclusive and that "[a] negative decision by the district court in the exercise of its discretion in a given case would certainly present no basis for review . . ." (at 834). And in *United States* v. *Dahlberg*, 120 So. 2d 585 (Fla. 1960), the court quashed an appeal by the United States in an estate matter on the ground, *inter alia*, that only the appellate court can certify a question for certiorari review:

> . . . the government says the case is clearly reviewable by certiorari because it presents a question of great public interest. The answer to this contention is that this is an appeal and not certiorari, and even if it were certiorari, the district court did not certify it to us as required by the Constitution and rules (at 585-586).

Thus, the law seems clear that the appeal court alone has power to certify a question and thus afford a basis for invocation of the Florida Supreme Court's certiorari jurisdiction on ground numbered 2.

Respondent contends that petitioners had the duty to seek certification in the District Court of Appeal, and that the certification is "usually" so initiated (p. 9, Respondent's brief). Such duty finds no support in any Florida law. On the contrary, the appellate courts assiduously guard *their* sole prerogatives in this field. In *Whitaker* v. *Jacksonville Expressway Authority*, 131 So. 2d 22 (Fla. App., 1961), the appeal court refused to recognize a "motion" to certify its decision as one passing upon a question of great public interest so as to provide a basis for certiorari review by the Florida Supreme Court, which "motion" was made by the appellant:

> Since the right of review does not lie from a failure or refusal of a District Court of Appeal to certify any decision rendered by it as one that passes upon a question of great public interest, a pleading of the character under discussion is not a motion . . . [but merely a suggestion] . . . such pleading has no legal effect (at 24).

The court held that:

> . . . a party litigant is not entitled as a matter of right to have any order entered by this court disposing of any pleading the purpose of which is to cast on this court the duty to certify one of its decisions as one which passes upon a question of great public interest . . . no formal order is necessary to dispose of such suggestion . . . any certificate by the court to the effect that a decision passes upon a question of great public interest *shall in all cases be upon the court's own motion* (at 24, emphasis added).

In the *Whitaker* case, the appellate court explicitly ruled that it will determine the certification issue itself and that counsel need not bring such issue to the court's attention since counsel's "suggestion", though not unwelcome, is unnecessary:

> Inherent in every decision rendered by a District Court of Appeal is the implication, unless otherwise stated or contrary action taken, that it *does not* pass upon a question of great public interest . . . (at 23).

Respondent cites *Fisher* v. *Perkins (Fisher* v. *Carrico)*, 122 U. S. 522 (1887). In the *Fisher* case, however, state law required the losing party in the superior court to make an application for permission to appeal on any ground; when the amount was under $1,000 and there was no dissenting opinion, the application would not be allowed without a certificate by two judges of the superior court that the question was novel and of sufficient importance to permit an appeal to the Kentucky Court of Appeals. Once the losing party secured such certificate, the superior court had as much duty to allow the appeal upon application as in other appeal applications; if the superior court denied such application, the United States Supreme Court's certiorari jurisdiction could be invoked. In other words, Kentucky *required* the losing party to initiate certiorari review in the

highest state court of a certified important question whereas Florida *denies* the losing party such right by placing such right and duty upon the appeal court and that court only.

Certiorari ground numbered 3 was also unavailable to petitioners. Respondent (footnote 9) states that petitioners "appear to contend" on page 12 of the Petition that *International Ladies Garment Workers Union, Local Chapter No. 415* v. *Sherry Manufacturers Co.*, 115 So. 2d 27 (Fla. App., 1959), cert. den. 119 So. 2d 293 (Fla. 1960) "is in conflict" with the decision of the Florida District Court of Appeal herein. It is true that petitioners contend that the appellate court (not the Supreme Court of Florida as respondent mistakenly asserts) in the *Sherry* case upheld peaceful picketing; but the two decisions involved are obviously not "in direct conflict . . . on the same point of law", as required by certiorari ground numbered 3, since the appellate court in the case at bar specifically distinguished picketing to protest racial discrimination from previous cases involving picketing by unions:

> Is a boycott promoted by picketing to advance the interest of a particular racial or social group, other than labor organization or professional association, valid? This is a racial or social question and the laws applicable to labor disputes have no application here (at 152 So. 2d 179, 182; Petitioners' main brief, appendix p. 7a; emphasis omitted).

Petitioners submit that the above discussion leaves no doubt that the Florida District Court of Appeal had *final appellate jurisdiction* of the case at bar under Article V, Sec. 5(3) of the Florida Constitution (providing for appeals to the appeal court where, as here, no direct appeal from the trial court to the Florida Supreme Court is permitted). As stated in *Karlin* v. *City of Miami Beach, Fla.*, 113 So. 2d 551 (Fla. 1959), the district courts of appeal are "in substantial measure *final appellate courts of last resort* except only in the limited area in which this court

[the Florida Supreme Court] has been endowed with the power to review by appeal or certiorari" (at 552, emphasis supplied). See also 5 Fla. Jur., *Certiorari, new* sec. 6.1 (1962 Supp., p. 42).

The Florida Supreme Court is now restricted to the appeal and certiorari jurisdiction set forth in the Florida Constitution and Florida Appellate Rules, *supra*. The entire purpose of the revised Florida jurisdictional law is to render the district courts of appeal the highest courts of the state except in the specified instances which are not applicable in the case at bar. *Ansin* v. *Thurston*, 101 So. 2d 808, 810 (Fla. 1958) explicitly describes such purpose and result:

> We have heretofore pointed out that under the constitutional plan the powers of this court to review decisions of the district courts of appeal are limited and strictly prescribed . . . It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, *with review by the district courts in most instances being final and absolute.*
>
> To fail to recognize that these are courts primarily of *final appellate jurisdiction* and to allow such courts to become intermediate courts of appeal would result in a condition far more detrimental to the general welfare and the speedy and efficient administration of justice than that which the system was designed to remedy.

As relevant Florida state law deems the Florida district court of appeal the highest court in the state capable of rendering a decision in the case at bar, this Court has jurisdiction to review said decision under Title 28, United States Code, sec. 1257(3), petitioners having asserted in the courts below privileges and immunities under the Constitution and laws of the United States.

2. Respondent also asserts that petitioners raise only a factual question and that this Court should not undertake to review the findings of fact of the court below. However, this Court has in the past made its own evaluation of the facts where they have been conclusive to a constitutional adjudication. *Blackburn* v. *Alabama*, 361 U. S. 199; *Spano* v. *New York*, 360 U. S. 315; *Napue* v. *Illinois*, 360 U. S. 264; *Muir* v. *Louisville Park Theatrical Association*, 102 F. Supp. 525 (W. D. Ky. 1951), aff'd 202 F. 2d 275 (6th Cir. 1953), vacated and remanded, 344 U. S. 971; *Niemotko* v. *Maryland*, 340 U. S. 268, 271; *Feiner* v. *New York*, 340 U. S. 315, 316, 322, fn. 4; *Watts* v. *Indiana*, 338 U. S. 49, 50-51; *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, 659; *Pierre* v. *Louisiana*, 306 U. S. 354, 358; *Baltimore & Ohio Railroad Company* v. *United States*, 298 U. S. 349, 372; *Norris* v. *Alabama*, 294 U. S. 587, 589, 590; Ohio Valley *Water Company* v. *Ben Avon Borough*, 253 U. S. 287. Further, the opinion below was not based upon the ruling that the picketing was violent, which would be a factual question, but upon the thesis that the cases protecting peaceful picketing apply only to labor organizations (Petitioners' main brief, Appendix page 7a), and the doctrine that unlawfulness of purpose rendered the picketing unlawful (Petitioners' main brief, Appendix page 7a).

Petitioners seek certiorari in this Court in order to affirm the principle that peaceful picketing to further legitimate group interests is constitutionally protected in the light of *NAACP* v. *Button*, 371 U. S. 415, and other cases cited in petitioners' main brief at pages 7-10. It is submitted that this principle is one of great public importance which should be reviewed by this Court.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1963

No. 362

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation, et al.,
Petitioners,

v.

WEBB'S CITY, INC., a Corporation.

On Writ of Certiorari to the District Court of Appeal of Florida, Second District

BRIEF FOR PETITIONERS

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v.

WEBB'S CITY, INC., a Corporation.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

BRIEF FOR PETITIONERS

Opinion Below

The opinion of the District Court of Appeal of Florida, Second District (R. 171-178) is reported at 152 So. 2d 179 (1963).

Jurisdiction

The judgment of the District Court of Appeal of Florida, Second District, was entered on April 7, 1963 (R. 171). Mr. Justice Black extended the time for filing the petition for writ of certiorari to August 14, 1963 (R. 180). The petition was filed on August 12, 1963, and was granted on December 9, 1963. Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257(3).

Question Presented

Whether petitioners, picketing peacefully in front of the premises of the respondent mart to advise the public that the establishment discriminates against Negroes in respect to service at the lunch counter and the cafeteria and employment throughout the organization, may be enjoined from engaging in this aspect of freedom of expression because they represent a racial minority rather than a labor union, in light of the guarantees of the Fourteenth Amendment to the United States Constitution?

Statement

The respondent in this case, Webb's City, is a corporation which operates a department store and other commercial facilities within the City of St. Petersburg, Florida. As part of its business enterprises, it maintains a lunch counter and cafeteria from which Negroes were excluded, prior to the events which gave rise to this controversy, although Negro customers were welcomed in all other facilities within the Webb's City complex.

Petitioners are the St. Petersburg Branch of the National Association for the Advancement of Colored People and Dr. Ralph M. Wimbish, its president. On December 2, 1960, and for the next four days, pickets from the St. Petersburg Branch of the National Association for the Advancement of Colored People carried placards outside of Webb's City, urging the public not to patronize the store because of its refusal to serve Negroes in the cafeteria (R. 33), and its discrimination in the hiring and upgrading of Negroes as employees (R. 33, 34).

On December 7, 1960, respondent filed its complaint in this cause, requesting a temporary and permanent injunction on the grounds that the acts of petitioners constituted a malicious and unlawful interference with the business of the respondent. The respondent alleged that it had

been and was being irrevocably damaged in that receipts from gross sales on each day of the picketing were approximately $15,000.00 below the reasonably expected revenue, and that it had no adequate remedy at law (R. 1-4). Respondent obtained a temporary restraining order in the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida, prohibiting petitioners from any further picketing of Webb's City, and from displaying signs requesting that members of the public not trade with respondent (R. 4-5).

On December 23, 1960, petitioner Dr. Ralph M. Wimbish moved to dissolve the temporary restraining order and filed his answer and defenses to this action (R. 12, 13-15). On December 27, 1960, petitioner the National Association for the Advancement of Colored People moved to dismiss the complaint (R. 15-16). On March 10, 1961, petitioner National Association for the Advancement of Colored People entered its answer and defenses to respondent's complaint (R. 54).

On March 8, 1961, hearing on petitioners' motions and trial of the issues was held in the Circuit Court of the Sixth Judicial Circuit in Clearwater, Florida (R. 72-154). The evidence showed that petitioner Dr. Wimbish organized the demonstration after negotiations with the store had failed (R. 120), in order to acquaint the public with the fact that Webb's City discriminated against Negroes in respect to service at its cafeteria (R. 118-119) and in the upgrading and hiring of employees (R. 33-34). The pickets were instructed not to interfere with anyone, to walk close to the edge of the sidewalk so that the public could pass on the street, and to keep 15 feet apart (R. 36, 126, 132, 142).

Mr. J. E. Webb, president of the respondent Webb's City, testified that he observed no violence or personal interference with customers during the picketing (R. 84, 88). This was confirmed by other witnesses (R. 119, 128,

138, 142, 145). Mr. Webb also testified that the pickets had once entered the store, but had left as soon as they were asked to do so by store executives (R. 86). Other witnesses testified that they did not observe the pickets entering the store at any time (R. 119, 123, 128, 137, 142, 145). A police officer testified that there was no violence (R. 107).

There was testimony that an employee emerging from Webb's City with parcels had been told by a picket that there were no cabs available, and had then obtained a ride in the automobile of another employee (R. 110-111); but these facts appear to bear no relevance to the instant controversy. Witnesses also testified that harassing anonymous telephone calls were received by respondent (R. 112); but it was affirmatively shown that petitioners had made no such calls (R. 38, 128, 138, 143, 145).

Evidence was presented that a stranger who began to march with the pickets and momentarily obstructed a doorway had been arrested (R. 71, 101), but it was shown that this man had no connection with the petitioners (R. 123, 124, 128), nor was any legal action taken by petitioners on his behalf (R. 124).

Witnesses indicated that the picketing was at all times peaceful, and that the pickets had followed instructions as to the proper method of informing the public of the discrimination complained of (R. 127, 142, 145, 149).

Respondent then introduced evidence that receipts for one of the days when picketing took place was some $11,660.00 below that of the same day of the preceding year, and that there had been a general loss of revenue since the commencement of the picketing (R. 94, 95). Petitioners showed that receipts for a day preceding the picketing were also below those of the same day the preceding year (R. 95).

On May 3, 1961, the Circuit Court of the Sixth Judicial Circuit of the State of Florida in and for Pinellas County

rendered its decision, issuing a permanent injunction restraining petitioners from picketing the premises and from displaying signs on the sidewalk near respondent's business, requesting that the public not trade with respondent (R. 154-160).

On June 28, 1961, petitioners filed their notice of appeal to the Supreme Court of Florida (R. 161), and on July 7, 1961, filed their assignments of error, contending that the injunction appealed from violated the Florida Constitution, Declaration of Rights, Sections 13 and 15, and the First and Fourteenth Amendments to the Constitution of the United States, in that the acts enjoined constituted peaceful picketing and were legally justified and protected by the above constitutional safeguards (R. 163-164). Petitioners also filed on July 7 their directions to the clerk and designation of the record (R. 165-166).

On May 17, 1961, respondent moved to tax costs against petitioners and to release respondent's surety; the motion was granted on July 10, 1961 (R. 162, 167-168). On July 13, 1961, petitioners moved to incorporate judgment for costs into the record on appeal because the judgment for costs was filed subsequent to the expiration of the appeal period; the motion was granted on July 24, 1961 (R. 168).

On May 8, 1962, the appeal was argued in the Supreme Court of Florida. On June 11, 1962, that court ordered the cause transferred to the District Court of Appeal of Florida, Second District, within five days, unless the parties "shall bring to the attention of the Court that the cause is one which should be heard and determined by this Court" (R. 169). On June 16, 1962, the petitioners filed objections to the transfer and a brief in support of the jurisdiction of the Supreme Court of Florida. On September 25, 1962, the Supreme Court of Florida entered an order transferring the cause to the District Court of Appeal of Florida, Second District, on the grounds that the Supreme Court of Florida had no jurisdiction over the cause (R. 170). The

court rejected the argument that the decision below had construed a controlling provision of the Florida and federal Constitutions.

On April 17, 1963, the District Court of Appeal of Florida, Second District, entered its opinion affirming the judgment of the circuit court enjoining petitioners from peaceful picketing of the respondent department store (R. 171-178), on the grounds that the picketing was "coercive" because it injured the business of a commercial enterprise (R. 177); and it held that cases relating to labor disputes were inapplicable (R. 176).

Because of a delay in preparing the record, Mr. Justice Hugo L. Black granted an order extending petitioners' time to file this petition until August 14, 1963 (R. 180).

On November 18, 1963, petitioners filed a reply brief requested by this Court, arguing that the judgment below was a final judgment within the meaning of Title 28, United States Code, Sec. 1257, since there were no grounds for appealing the judgment below to the Supreme Court of Florida other than those already rejected by that court.

After this Court had granted certiorari on December 9, 1963 (R. 181), respondent on January 4, 1964, filed a "Suggestion of Mootness" alleging that the sole issue in this cause was the discrimination in respondent's cafeteria, and that this discrimination had ceased. Petitioners opposed this suggestion in a memorandum filed on January 10, 1964, pointing out that discrimination in respondent's cafeteria was not petitioners' sole complaint, and, moreover, the legality of respondent's practices was not the question being reviewed by this Court. The issue for determination in these proceedings is whether petitioners may constitutionally be enjoined from engaging in peaceful picketing directed at the consumer to enlist public support for a challenge of the practices of a business establishment.

Summary of Argument

Petitioners sought, through the method of peaceful picketing, to enlist public support for their protest against the racial discrimination practiced by the respondent retail establishment, Webb's City, which refused to serve Negroes in its cafeteria and discriminated on the basis of race in hiring and upgrading employees (R. 33, 34). Respondent claimed that it was economically damaged because consumers withheld their patronage following the picketing, and that on this basis the picketers could be enjoined from appealing to consumers through the carrying of placards in the public streets in front of respondent's premises.

This Court has held that peaceful picketing is protected under the First and Fourteenth Amendments as a form of free speech which cannot be stifled through state interference and that "the group in power at any moment may not impose . . . sanctions on peaceful and truthful discussion of matters of public interest merely on a showing that others may thereby be persuaded to take action inconsistent with its interests." *Thornhill* v. *Alabama*, 310 U. S. 88, 104.

Petitioners did not engage in violence, such as was proscribed in *Drivers Union* v. *Meadowmoor Dairies*, 312 U. S. 287, nor were they seeking an unlawful objective which would have brought them under the rule of *Giboney* v. *Empire Storage Company*, 366 U. S. 490; *Carpenters and Joiners Union* v. *Ritter's Cafe*, 315 U. S. 722; *International Brotherhood of Teamsters, Local 695* v. *Vogt, Inc.*, 354 U. S. 284; and *Hughes* v. *Superior Court*, 339 U. S. 460. The objectives of petitioners—seeking an improvement in the status of Negro citizens—have been upheld by this Court. *NAACP* v. *Alabama*, 357 U. S. 449; *Bates* v. *Little Rock*, 361 U. S. 516; and *NAACP* v. *Button*, 371 U. S. 415. There is, therefore, no factor in the instant case upon which an injunction against peaceful picketing can be grounded.

The decision below, affirming an injunction issued by the Circuit Court of the Sixth Judicial Circuit for Pinellas County, was not based on a finding that the picketing was enmeshed in violence, nor upon any other valid state ground. Instead the injunction was upheld because the picketing was coercive and on the rationale that since petitioners represented a racial minority rather than a labor union, the labor cases were inapposite (R. 176). Thus, the decision is supportive of the use of state power to maintain a state policy of segregation and discrimination. It is clear that the 14th Amendment proscribes state authority directed towards the enforcement of racial and color differentiations. *Yick Wo* v. *Hopkins*, 118 U. S. 356; *Sweatt* v. *Painter*, 339 U. S. 629; *McLaurin* v. *Oklahoma State Regents*, 339 U. S. 637; *Brown* v. *Board of Education*, 347 U. S. 483; *Goss* v. *Board of Education*, 373 U. S. 683; *Watson* v. *City of Memphis*, 373 U. S. 526; *Gayle* v. *Browder*, 352 U. S. 903. The decision is, therefore, in conflict with the constitutional doctrine barring racial discrimination, as well as that protecting the right of freedom of expression.

Respondent seeks to prevent this Court from reviewing the decision below by alleging that because it has integrated its cafeteria, all the issues are resolved and the cause is moot. However, the record demonstrates that petitioners picketed to protest various policies of respondent, including his refusal to hire and upgrade employees on the basis of merit, rather than race (R. 33, 34). Moreover, the issue before this Court is not whether respondent's views and policies are legal, but whether petitioners have the constitutional right to advise the public of their views through peaceful picketing.

Since Negroes and groups concerned with Negro betterment do not own newspapers, television or radio stations, or other means of mass communication, it is essential that they be permitted to reach the public at large by being protected in their right to engage in peaceful picketing and to disseminate their ideas through the carry-

ing of signs as to the evil and hurt of discrimination. Without such a right, this Court's holdings in *NAACP* v. *Alabama, supra* and *NAACP* v. *Button, supra,* that minorities may act in concert to advocate lawful ends cannot be made wholly effective, and an avenue for securing public acceptance of the principle of equality of opportunity and treatment will be closed off.

ARGUMENT

I. Picketing which is lawful in manner and purpose is protected by the First and Fourteenth Amendments of the United States Constitution.

The decisions of this Court have established that peaceful picketing, like the distribution of pamphlets and other printed matter, is a form of free speech which is entitled to the constitutional protection of the First and Fourteenth Amendments. As was said in *Carlson* v. *California,* 310 U. S. 106, 112:

> The carrying of signs and banners, no less than the raising of a flag, is a natural and appropriate means of conveying information on matters of public concern . . . . For the reasons set forth in our opinion in *Thornhill* v. *Alabama,* supra, publicizing the facts of a labor dispute in a peaceful way through appropriate means, whether by pamphlet, by word of mouth or by banner, must now be regarded as within that liberty of communication which is secured to every person by the Fourteenth Amendment against abridgment by a State.

This constitutional safeguard cannot be lost merely because the groups or individuals picketing enlist the support of others so that public pressure might be brought to bear upon the person being picketed to change his course of conduct. Cf. *Ex Parte Lyons,* 81 P. 2d 190 (1938); *Rosman* v. *United Strictly Kosher Butchers,* 298 N. Y. S. 343 (1937). Analysis will show that such influences

are an ingredient of all picketing. The fact, therefore, that the public was persuaded to side with the picketers cannot form the basis for a judicial determination of the legality or illegality of this means of expression. Decision rests on whether mere persuasion or more coercive means are employed to gain public support.

The concept that picketing may in some instances be coercive was first introduced in the decisions of this Court in the concurring opinion of Mr. Justice Douglas in *Bakery Drivers* v. *Wohl*, 315 U. S. 769, 776, which pointed out that picketing and speech, while related, were not synonymous.

> Picketing by an organized group is more than free speech, since it involves patrol of a particular locality and since it may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated. Hence those aspects of picketing make it the subject of restrictive regulation.

However, there is no legal or factual element in the instant case which would place it within the ambit of this Court's holdings which have found some aspect of picketing to be coercive and therefore outside the protective shelter of the constitutional guarantees of freedom of speech. Petitioners made their appeal solely through persuasion. There was no violence involved (R. 84, 88, 107), such as was condemned in *Drivers Union* v. *Meadowmoor Dairies*, 312 U. S. 287. Nor was fear of union discipline a factor, as it was in *Giboney* v. *Empire Storage Company*, 366 U. S. 490, 498, where Empire was damaged because of the ". . . formation of a picket line warning union men not to cross at peril of their union membership." See also *Carpenters and Joiners Union* v. *Ritters Cafe*, 315 U. S. 722, 723; *Local Union No. 10, Plumbers & Steamfitters* v. *Graham*, 345 U. S. 193, 195; *International Brotherhood of Teamsters* v. *Hanke*, 339 U. S. 470, 472; *International Brotherhood of Teamsters, Local 695* v. *Vogt, Inc.*, 354 U. S. 284, 286; *International Brotherhood of Electrical Workers* v. *National Labor Relations Board*, 341 U. S. 694, 697.

Nor can it be argued that petitioners' conduct was not constitutionally privileged because their goals were in violation of a valid state law and in pursuit of an unlawful objective, such as a secondary boycott. See *Carpenters and Joinders Union* v. *Ritter's Cafe, supra.* See also *Local Union No. 10, Plumbers & Steamfitters* v. *Graham, supra; Building Service Employees* v. *Gazzam*, 339 U. S. 532; *International Brotherhood of Teamsters, Local 695* v. *Vogt, Inc., supra;* and *Giboney* v. *Empire Storage Co., supra.* On the contrary, the lawfulness of petitioners' objective—equality of treatment for all Negro citizens—was reaffirmed most recently in *NAACP* v. *Button*, 371 U. S. 415, 429.

Petitioners were protesting discrimination in hiring (R. 33-34) but were not seeking the establishment of a racial quota. Thus, the holding in *Hughes* v. *Superior Court*, 339 U. S. 460, is not pertinent. In *Hughes*, picketing to induce an employer to hire a certain percentage of Negro employees was held to be unlawful, on the grounds that state law prohibited a quota system as in essence a discrimination based on race.[1] However, this Court said at page 466: "The California Supreme Court suggested a distinction between picketing to promote discrimination, as here, and picketing against discrimination." The Calfornia court assumed without deciding that, "if such discrimination exists, picketing to protest it would not be for an unlawful objective." *Hughes* v. *Superior Court*, 98 P. 2d 885, 888 (1948).

In short, we have in the instant case nothing beyond the "mere influence exerted by the fact of picketing" as sanctioned in *Cafeteria Employees Union* v. *Angelos*, 320 U. S. 293. Some members of the public may have decided to withhold their patronage as a result of agreement with petitioners' position. Respondent seeks to enjoin the

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[1] Cf. *Green* v. *Samuelson*, 168 Md. 421 (1935) and *A. S. Beck Shoe Corp.* v. *Johnson*, 274 N. Y. S. 946 (1934).

picketing on this basis. However, as this Court said in *Thornhill* v. *Alabama*, 310 U. S. 88, at page 104:

> It may be that effective exercise of the means of advancing public knowledge may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute. Every expression of opinion on matters that are important has the potentiality of inducing action in the interests of one rather than another group in society. But the group in power at any moment may not impose . . . sanctions on peaceful and truthful discussion of matters of public interest merely on a showing that others may thereby be persuaded to take action inconsistent with its interests.

This doctrine, it is respectfully submitted, still retains all of its vitality.

Respondent also seeks to support the injunction on the grounds that petitioners could have used other means to communicate their views to the public. This argument was rejected in *Schneider* v. *State*, 308 U. S. 147, 163:

> [The] streets are natural and proper places for dissemination of information and opinion; and one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place.

See also *Hague* v. *CIO*, 307 U. S. 496, 516.

Moreover, Negroes do not own any major newspapers or television and radio stations in St. Petersburg, Florida, which reach the public as a whole; nor are funds for advertising usually available to enable them to convey their views to the public concerning various aspects of racial discrimination and race relations in the community. Even where funds are made available, the use of paid advertisements as communication media may not be possible. Compare *Kennedy* v. *Retail Clerks Union, Local 324*, 194 F. Supp. 131, 135 (S. D. Cal. 1961), where the Retail Clerks Union

attempted to place an advertisement in five Los Angeles metropolitan newspapers, but only two of the newspapers would accept it. In any event, the injunction on review here gains no sustenance from the fact that indirect or more expensive means of expression were available than those employed.

Indeed, in many instances, the carrying of signs relating the policies of a merchant on racial discrimination may be the sole avenue of appeal to the public. Such an appeal reaches not only a narrow segment of the Negro community but the white community as well. It may be that a placard with the words "BUY WITH FRIENDS: MERCHANTS WHO TREAT YOU WITH HUMAN DIGNITY" (R. 68) could cause a spectator who has not considered the problem—and who, under Florida's system of segregation, has severely limited opportunities to exchange views with Negroes—to examine the rightfulness of discrimination in the context of a democratic society founded on the worth of the individual.

The opportunity to persuade is of paramount importance in a democratic society, for it keeps divergent views before the people. It is a basic postulate of our society that if dissemination of ideas is unhampered, American citizens will be better informed and more likely to reject what is false. In a complex modern society such as ours, public persuasion is more likely to be effected through group action. For that reason this Court has been particularly concerned with protecting the constitutional right of unpopular minorities to band together to act in concert in the pursuit of lawful ends. *NAACP* v. *Alabama*, 357 U. S. 449; *Bates* v. *Little Rock*, 361 U. S. 516. The protection accorded orderly group activities in those cases, like the guarantee of freedom of speech for the individual, is the indispensable ingredient of an open society.

This Court in *NAACP* v. *Button*, *supra*, pointed out that a politically weak minority, unable to improve its

status through executive or legislative action, often resorts to litigation to vindicate its fundamental rights. In a society based on the rule of law, testing ideas in the courts is a valuable aid to the achievement of equal citizenship. Similar succor is afforded when minority views, broadcast to the public by peaceful picketing, are thereby given the opportunity to gain wider understanding and acceptance. This too "makes possible the distinctive contribution of a minority group to the ideas and beliefs of our society." *NAACP* v. *Button*, *supra*, at page 431.

II. The decision below is in conflict with the holdings of this Court, since it seeks to restrain public protests against racial discrimination because of a state policy of segregation.

Respondent's president and the police officer, on the scene during the picketing, testified that there was no violence (R. 88, 107). The pickets marched 15 feet apart and did not interfere with respondent's customers in any way (R. 84). A stranger who began to march with the picketers and momentarily obstructed a doorway was arrested, but this was shown to have no relation to the petitioners' activities (R. 123, 124, 128). It was also shown that petitioners had no connection with anonymous telephone calls received by respondent (R. 38, 128, 138, 143, 145). The picketing was at all times peaceful. Nevertheless, the Florida courts held that the picketing was subject to prohibition.

The decision below, petitioners respectfully submit, is implicitly founded upon Florida's racial policy [2] and repre-

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[2] See Fla. Statutes, Ann., 1944:
Section 955.12 (segregation at industrial school for boys)
Secs. 352.03 and 352.04 (segregation on railroads)
Sec. 945.08 (as amended, 1957) (segregation of prisoners)
Sec. 228.09 and Fla. Constitution, Article 12, Sec. 12 (segregation in schools).

sents an attempt to suppress peaceful protest against racial discrimination in violation of the equal protection clause of the Fourteenth Amendment. Under Florida law picketing by labor unions is permitted, but a different and adverse rule governs picketing by Negro groups (R. 171). The effect of such a holding is to cut off lawful group advocacy of racial equality and attempts to enlist support of a challenge to the validity of racial discrimination.

This judgment below is reinforced by a recent decision of the District Court of Appeal of Florida, Second District, *Young Adults for Progressive Action, Inc.* v. *B. & B. Cash Grocery Stores, Inc.*, 151 So. 2d 877 (1963). The court held at page 878 that although the picketing with the intention of advising the public that a store discriminated in hiring and upgrading of Negroes was concededly peaceful, the pickets did not "represent the interest of labor" and had no constitutional protection because picketing "is more than 'free speech' and must be dealt with accordingly."

And on December 19, 1963, Marion County Prosecuting Attorney, E. G. Musleh, filed a Petition for Injunction in the Juvenile Court in Marion County on behalf of himself and as attorney for Sheriff Doug Wiliis of Marion County, asking for an injunction "prohibiting *minority groups* from picketing or demonstrating in Marion County, Florida . . ." [emphasis added]. On December 20, 1963, in response to this petition, Lewis O. Meyers, Jr., County Judge of the Juvenile Court in and for Marion County, Florida, issued an order that no person under the age of seventeen within the county may picket in front of or near local business establishments without prior permission from the Juvenile Court.[3]

This Court has consistently ruled that no state may enforce regulations based explicitly or implicitly upon a racial

[3] Unpublished.

criterion. See *Yick Wo* v. *Hopkins*, 118 U. S. 356; *Sweatt* v. *Painter*, 339 U. S. 629; *McLaurin* v. *Oklahoma State Regents*, 339 U. S. 637; *Brown* v. *Board of Education*, 347 U. S. 483; *Gayle* v. *Browder*, 352 U. S. 903, affirming 142 F. Supp. 707 (M. D. Ala. 1956); *Goss* v. *Board of Education*, 373 U. S. 683; *Watson* v. *City of Memphis*, 373 U. S. 526. This is true whether such regulations are propounded through its legislature or its judiciary. *Shelley* v. *Kraemer*, 334 U. S. 1, 14. See also *Ex parte Virginia*, 100 U. S. 339, 347. Certainly, the state cannot argue that its segregation laws suffice to establish a subordinating interest, rendering permissible incursions on the petitioners' rights to freedom of association and freedom of speech. *NAACP* v. *Alabama*, *supra*.

Petitioners' right to picket in the public streets is indisputable, in the light of this Court's decisions in *Lombard* v. *Louisiana*, 373 U. S. 267 and *Peterson, et al.* v. *City of Greenville*, 373 U. S. 244, which held that where a state encouraged and enforced segregation, peaceful demonstration—even on the premises of a discriminatory merchant—cannot be stifled by the state. However, without a declaration of their right to picket in order to eliminate discrimination, petitioners and similar organizations will be forced continuously to seek protection from the federal courts. For example, the defendants were compelled to go to the Federal District Court to seek the dissolution of the unconstitutional state court order of Judge Myers of the Juvenile Court of Marion County, *supra*; a preliminary injunction against the enforcement of the order has been granted by the District Court. *Florence, et al.* v. *Lewis O. Meyers, Jr., et al.*, — F. Supp. — [U. S. District Court for the Middle District of Florida, Ocala Division, No. 64-3-Civil-Ocala, Jan. 22, 1964].

In the instant case, petitioners have been under the unlawful effect of the injunction for more than three years.

Negroes in the State of Florida will continue to be harassed by such restraints in their efforts to make public their grievances, until the decision below is reversed on the merits and constitutional protection is accorded the right to peaceful picketing in an effort to achieve equality of opportunity and treatment for all persons, without invidious differentiations based upon race.

III. Respondent's suggestion of mootness has no basis in law or fact.

Respondent alleges that its cafeteria is now integrated and that this is the sole issue before this Court, and suggests that the case is therefore moot. This contention stems from a misreading of the applicable law and the record in this case.

The record conclusively shows that petitioners were protesting discrimination in the hiring and upgrading of employees as well as respondents' refusal to serve Negroes in the cafeteria. Petitioner Dr. Ralph Wimbish leaves no doubt on that score (R. 33-34):

> A. I am of the opinion that the body was of the opinion also that not only was there discrimination as far as use of a particular facility was concerned, a food service, but there was also discrimination in the employment area in that there are certain jobs available to citizens of this state and country at Webb's City who are white that are not available to [N]egroes. And I refer specifically to such jobs as clerks and certain other positions considered to be white collar that [N]egroes are not eligible for on the basis of race and race alone.
>
> Q. Then, as I understand your testimony, that in addition to your objection to the manner in which Webb's City operated its cafeteria and lunch counter,

> that you also objected—that your organization also objected to the fact that members of your race can't hold any job in the store, is that right? A. That is right.
>
> Q. Would it be fair to say then that in your opinion the management, and specifically the individual known as Doc Webb, whose initials are J. E.—I think they are J. E., I am not sure. What are Doc's initials? A. I think that is right, J. E., yes.
>
> Q. Doesn't have the discretion or the ability to choose the personnel that he wants to work in various departments of [fol. 55] his store, is that—A. No sir, that is not correct. I don't profess that he does not have the discretion nor the ability to select, but I personally charge that he would deny persons that are [N]egroes who have the same qualifications as a white person for any given job. He would deny the [N]egro the privilege of holding that job for the reason that he is a [N]egro.

The pickets carried a sign with the legend "DON'T BUY WHERE YOU CANNOT WORK ON ANY JOB OR BE UPGRADED TO BETTER PAYING POSITIONS" (R. 156). The right to protest these employment practices is very much in controversy here.

The maintenance of cafeteria facilities for whites only was another grievance about which petitioners wished to make a public protest. Respondent claims to have integrated its lunch counter in early 1962 and its cafeteria in the summer of 1963. Yet, it fought with considerable resourcefulness and energy to maintain the injunction in effect preventing picketing to protest any of its policies, and to dissuade this Court from granting the writ of certiorari in this cause. It was only after certiorari was granted that respondent announced that its cafeteria was integrated and suggested that the cause had, therefore, become moot.

Where the party enjoined has allegedly reformed and thereby removed the source of complaint, the cause is not rendered moot because the other party is not bound to accept and rely upon his adversary's assurances of continued good conduct. As this Court said in *Gray* v. *Sanders*, 372 U. S. 368, 376: "... the voluntary abandonment of a practice does not relieve a Court of adjudicating its legality, particularly where the practice is deeply rooted and long standing." See also *John T. Lloyd Laboratories, Inc.* v. *Lloyd Bros. Pharmacy, Inc.*, 131 F. 2d 703, 706 (6th Cir. 1942); *Saxlehner* v. *Eisner, et al.*, 147 Fed. 189 (2d Cir. 1906); *Consumers Union of United States, Inc.* v. *Lectra Sales Corp., et al.*, 179 F. Supp. 161, 162 (S. D. N. Y. 1959); *Consumers Union of United States, Inc.* v. *Admiral Corp.*, 186 F. Supp. 800, 801 (S. D. N. Y. 1960); *Juvenile Shoe Co. Inc.* v. *Federal Trade Commission*, 289 Fed. 57, 59-60 (9th Cir. 1923). Certainly, the rationale of these cases applies here, where the person seeking the injunction gives assurances of changed policies to block a determination of the validity of petitioners' claimed right under the 14th Amendment to picket its establishment free of state restraint. Petitioners should not be required to accept or rely upon respondent's statements of a change of heart so as to render the cause moot. This is particularly true where the party claiming to have reformed continues to question the validity of his opponent's legal position, for this is an indication that the practices in dispute might again be reinstituted. *Sears Roebuck & Co.* v. *F.T.C.*, 258 Fed. 307, 310 (7th Cir. 1919).

Moreover, there can be even less question of mootness in the instant case than in *Gray* v. *Sanders*, *supra*, since the changed policies involved are not even the subject of the suit. The legality of respondent's racial discrimination is not at issue. What is before this Court is the legality of petitioner's picketing to enlist public support for their views, and the constitutionality of respondent's attempts

to ban such picketing. Respondent cannot, after injuring petitioners, merely withdraw its suit to avoid court review; the intent of Rule 41 of the Federal Rules of Civil Procedure was clearly to prevent such a possibility. Cf. *In re Barnett*, 124 F. 2d 1005 (2 Cir. 1942).

It is respectfully submitted that since the controversy between the parties still exists and the federal issues remain of primary operative importance, the case should be decided on its merits by this Court.

CONCLUSION

Wherefore, it is respectfully submitted that the decision below, since it conflicts with both the constitutional doctrine barring racial discrimination and that upholding freedom of expression, should be reversed on the merits and that the injunction against petitioners should be vacated.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 362

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*, *Petitioners*,

v.

WEBB'S CITY, INC., *Respondent*.

MEMORANDUM OF RESPONDENT SUGGESTING THAT THE CAUSE IS MOOT

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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v.

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MEMORANDUM OF RESPONDENT SUGGESTING THAT THE CAUSE IS MOOT

Respondent Webb's City, Inc. submits this memorandum to advise the Court of facts beyond the existing record which, in respondent's opinion, render this case moot.

Respondent operates a department store in St. Petersburg, Florida. In December of 1960, Negroes were not served at the store's lunch counter or in its cafeteria. During that month (erroneously stated to be in 1962 in the petition for writ of certiorari), "pickets from the St. Petersburg Branch of the

National Association for the Advancement of Colored People carried placards outside of Webb's City, urging the public not to patronize the store because of its undemocratic refusal to serve Negroes in its cafeteria." (Petition for writ of certiorari, p. 3.) In view of the nature of the picketing and its adverse economic consequences, respondent sought and obtained an injunction which limited petitioners' activities in opposition to the policy of segregation. (See pages 4-7 of respondent's brief in opposition to petition for writ of certiorari.)

While the legality of the injunction was being challenged in Florida appellate courts, respondent (like numerous other business organizations) reviewed its policies. In early 1962, the lunch counter at Webb's City was voluntarily and peacefully desegregated. Not long before the Court granted certiorari herein, the cafeteria was similarly desegregated (wholly independently of this litigation). Negroes now are served, with no discrimination, at both of respondent's eating facilities. Since petitioners' complaint was with the former policy of segregation, and since respondent voluntarily has abandoned its former policy of segregating its eating facilities, there no longer exists any controversy and the cause should be dismissed for mootness.[1] *E.g., Local 8-6, Oil Workers Union, AFL-CIO* v. *Missouri*, 361 U.S. 363 (1960); *Harris* v. *Battle*, 348 U.S. 803 (1954); *Heitmuller* v. *Stokes*, 256 U.S. 359 (1921).

Shortly after learning that the cause had become moot, present counsel for respondent telephoned coun-

[1] Of course, respondent assures the Court that it intends to continue its present policy of integration.

sel for petitioners (on December 26, 1963), to advise the latter of the imminent filing of this memorandum. This was done because of a desire to save petitioners unnecessary effort and expense, and counsel for respondent suggested that the printing of the record be halted to minimize petitioners' costs therefor. However, counsel for petitioners expressed a desire both to have the Court decide this case on the merits and to have the printing of the record completed.[2]

Respondent thus is aware of petitioners' interest in having this Court render an opinion on the merits herein. "But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants. * * * This is especially true where the issues involved reach constitutional dimensions, for then there comes into play regard for the Court's duty to avoid decision of constitutional issues unless avoidance becomes evasion." *Rice* v. *Sioux City Memorial Park Cemetary, Inc.*, 349 U.S. 70, 74 (1955).

A dismissal herein, without more, would leave outstanding the injunction below. *Cf. Taylor* v. *McElroy*, 360 U.S. 709 (1959); *United States* v. *Munsingwear, Inc.*, 340 U.S. 36 (1950); *United States* v. *Anchor Coal Co.*, 279 U.S. 812 (1929). Respondent acknowledges petitioners' interest in terminating that injunction, and has no objection to a dismissal coupled with a vacating of the judgment of the District Court of

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[2] In view of the submission of this memorandum, respondent takes no position with respect to petitioners' December 27, 1963 "Motion To Advance Argument." It is noted, however, that the case (No. 88) which petitioners wish to have argued with this one involves a labor union and a secondary boycott question; no labor question exists in this case.

Appeal of Florida, Second District. *Riley* v. *International Brotherhood of Teamsters,* 336 U.S. 930 (1949).

WHEREFORE, in light of the foregoing considerations, respondent suggests that the issue which petitioners seek to have resolved is moot and that the case should be dismissed on that ground.

Respectfully submitted.

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No. 362

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v.

WEBB'S CITY, INC., a Corporation.

MEMORANDUM OF PETITIONERS IN OPPOSITION TO SUGGESTION OF MOOTNESS

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MEMORANDUM OF PETITIONERS IN OPPOSITION TO SUGGESTION OF MOOTNESS

Respondent, the original plaintiff in this action, now suggests in its memorandum of January 3, 1964, that this Court regard this cause as moot and that the judgment of the District Court of Appeal of Florida be vacated. However, respondent's memorandum does not demonstrate that the cause is moot.

The injunction involved prevents the petitioners from peacefully picketing to protest any policy of respondent, whether this policy be discrimination in its cafeteria or discrimination in upgrading Negro employees in menial capacities. Thus, the alleged integration of the cafeteria does not render moot the controversy between the petitioners and the respondent, in view of the breadth of the injunction, which restrains petitioners from:

> (a) Displaying signs, posters or handbills requesting that members of the public not trade with

> the plaintiff, either on the premises of the plaintiff or on the sidewalk immediately adjacent thereto.
>
> (b) Picketing the premises of the plaintiff located at 128 Ninth Street, South, St. Petersburg, Florida. . .

This was the order which was sought and obtained by respondent, and the legality of which is challenged by petitioners. Indeed, though respondent claims to have served Negroes in its cafeteria since early 1962, it apparently did not feel that the controversy between itself and petitioners was over, for respondent continued to litigate in the Supreme Court of Florida, in the District Court of Appeal of Florida, and finally in this Court in order to keep the injunction in full force. Only at the point when this Court decided to review on the merits the validity of the restraint on petitioners' right to engage in peaceful picketing was any court informed of respondent's change in policy, and the issue of mootness was raised for the first time.

The suggestion of mootness is based on a faulty analysis of the real issues before this Court. This case does not involve an adjudication of the constitutional right to be served without discrimination in a privately-owned cafeteria. Thus, respondent's announced change in policy in this aspect of its operations has no relation to the question brought here for review. The crux of this case is not the legality of respondent's attitudes on racial discrimination, but the legality of petitioners' engaging in picketing to inform consumers of their views of a merchant's policies and to effectuate changes through public support. As was said in *Thomas* v. *Collins*, 323 U. S. 516, 537, " 'Free trade in ideas means free trade in the opportunity to persuade to action, not merely to describe facts.' This right has been upheld not only in the context of racial discrimination but also as to protests against the showing of certain motion pictures or the sale of goods on Sunday. *Ex Parte Lyons*, 81 P. 2d 190 (1938). See also *Rosman* v. *United Strictly*

Kosher Butchers, 298 N. Y. S. 343 (1937). In none of these cases was there court review of the policies being protested—the decisions concerned themselves solely with the right to protest.

Picketing is a means through which minority groups may seek to secure public support for their efforts to obtain an improvement in their status. It is not merely in isolated use in the instant case, but is frequently resorted to as a method of communication by groups advocating a lawful goal. It is neither as indirect nor as expensive as other methods of communication, but petitioners contend that the First and Fourteenth Amendments afford the same protection to peaceful picketing as to any other form of speech. *Thornhill* v. *Alabama,* 310 U. S. 86. What is of vital concern is whether such groups may, consistent with the Fourteenth Amendment, engage in peaceful picketing free of judicial interference and restraint. The validity of their right to exercise this form of freedom of expression is ripe for determination by this Court.

At present, under Florida law racial groups may not picket to advance their beliefs. Vacating the judgment below without considering the case on its merits would merely save petitioners from a charge of contempt if they again picket Webb's City, but would not affect the pursuasive force of the decision. The judgment of the District Court of Appeal of Florida supports the issuance of injunctions which petitioners contend are violative of First and Fourteenth Amendment rights. It will continue to immobilize racial groups which wish to picket peacefully in their effort to improve their status, unless it is vacated or reversed by this Court on the merits.

As was held in *In re Barnett,* 124 F. 2d 1005 (2nd Circuit, 1942), Rule 41 of the Federal Rules of Civil Procedure which states that an action may be dismissed after an answer is served only by permission of the court, manifests the intent to provide that the mere effort of the plaintiff to

withdraw the suit should not make the cause moot. Fla. Stat. Ann., Rules of Civil Procedure 1.35(a)(2) embodies the same intent as Rule 41.

It is submitted that respondent has shown no grounds for preventing a consideration of this cause on the merits, other than its disinclination to have the issues decided by this Court. Neither petitioners nor other groups seeking to use picketing for their own betterment and to advance social beliefs will be free of court interference in Florida unless this Court rules on the very real controversy in this cause.

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